

FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 79

MIKE MILANOVICH, ET AL., PETITIONERS,

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MAY 6, 1960
CERTIORARI GRANTED JUNE 20, 1960**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

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MIKE MILANOVICH, ET AL., PETITIONERS,

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FOR THE FOURTH CIRCUIT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Cr. 11-696

UNITED STATES OF AMERICA,

v.

MIKE MILANOVICH, VIRGINIA MILANOVICH,
BENJAMIN THOMAS GUERRIERI.

INDICTMENT—Filed July 16, 1958

July 1958 Term—At Newport News, Va.

The Grand Jury Charges:

That Mike Milanovich, Virginia Milanovich and Benjamin Thomas Guerrieri, heretofore, to-wit, on or about the 17th day of May, 1958, at the United States Naval Air Station, Norfolk, Virginia, in the Eastern District of Virginia and within the jurisdiction of this Court, did unlawfully steal or purloin certain things of value of the United States Navy Department, a Department and Agency of the United States; to-wit, \$23,627.64 in lawful currency of the United States, a further description of said property being unknown, said property being the property of the United States Navy Department, as aforesaid. (Title 18, Section 641, U. S. C. A.)

Second Count

The Grand Jury Further Charges:

That Mike Milanovich, Virginia Milanovich and Benjamin Thomas Guerrieri, heretofore, to-wit, on or about the 2nd day of June, 1958, at the United States Naval Amphibious Base, Little Creek, Virginia, in the District and jurisdiction aforesaid, did unlawfully steal or purloin certain things of value of the United States Navy Department, a Department and Agency of the United States;

to-wit, \$14,788.78 in lawful currency of the United States, a further description of said property being unknown, said property being the property of the United States Navy Department, as aforesaid. (Title 18, Section 641, U. S. C. A.)

[fol. 3]

Third Count

The Grand Jury Further Charges:

That Mike Milanovich, Virginia Milanovich and Benjamin Thomas Guerrieri, heretofore, to-wit, on or about the 17th day of May, 1958, at Norfolk, Virginia, in the Eastern District of Virginia and within the jurisdiction of this Court, did unlawfully receive, conceal and retain, with intent to convert to their own use or gain, knowing it to have been stolen or purloined, certain things of value of the United States Navy Department, an agency and Department of the United States; to-wit, \$23,627.64 in lawful currency of the United States, a further description of said property being unknown, said property being the property of the United States Navy Department, as aforesaid. (Title 18, Section 641, U. S. C. A.)

Fourth Count

The Grand Jury Further Charges:

That Mike Milanovich, Virginia Milanovich and Benjamin Thomas Guerrieri, heretofore, to-wit, on or about the 2nd day of June, 1958, at Norfolk, Virginia, in the District and jurisdiction aforesaid, did unlawfully receive, conceal and retain, with intent to convert to their own use or gain, knowing it to have been stolen or purloined, certain things of value of the United States Navy Department, an agency and Department of the United States; to-wit, \$14,788.78 in lawful currency of the United States, a further description of said property being unknown, said property being the property of the United States Navy Department, as aforesaid. (Title 18, Section 641, U. S. C. A.)

A True Bill:

J. C. Christian, Foreman.

L. S. Parsons, Jr., United States Attorney.

[fol. 5]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

[Title omitted]

MOTION FOR BILL OF PARTICULARS—
Filed October 6, 1958

The defendants, Mike Milanovich and Virginia Milanovich, move this Honorable Court for an Order directing the United States of America to file a bill of particulars of the following matters embraced in the indictment:

Count I

1. The time of day or night that the two defendants, Mike and Virginia Milanovich, allegedly stole or purloined the \$23,627.64 in lawful currency of the United States.

2. The type of money stolen, to-wit: currency or coin, or both, and the amounts of each.

3. The manner in which Mike Milanovich and Virginia Milanovich stole the money alleged.

4. Specifically, what part did each of the defendants, Mike and Virginia Milanovich, play in the alleged theft.

5. The names and addresses of all the parties claimed by the Government to have participated in this theft.

6. Was either, or both, present at the scene of the crime, and if so, who.

7. The means of entry, and from what part of the premises the money was stolen.

[fol. 6] 8. The names and addresses of all witnesses intended to be used by the Government in this case.

9. The person or persons from whose custody money was stolen.

Count II

1. The time of day or night that the two defendants, Mike and Virginia Milanovich, allegedly stole or purloined the \$14,788.78 in lawful currency of the United States.

2. The type of money stolen, to-wit: currency or coin, or both, and the amounts of each.

3. The manner in which Mike Milanovich and Virginia Milanovich stole the money alleged.

4. Specifically, what part did each of the defendants, Mike and Virginia Milanovich, play in the alleged theft.

5. The names and addresses of all the parties claimed by the Government to have participated in this theft.

6. Was either, or both, present at the scene of the crime, and if so, who.

7. The means of entry, and from what part of the premises the money was stolen.

8. The names and addresses of all witnesses intended to be used by the Government in this case.

9. The person or persons from whose custody money was stolen.

Count III

1. The time of day or night that the two defendants, Mike and Virginia Milanovich, unlawfully received the alleged stolen money.

2. The person or persons from whom the alleged stolen money was received by Mike and Virginia Milanovich.

3. Whether or not the money was received by both Mike Milanovich and Virginia Milanovich, or either.

[fol. 7] 4. The amount so received, etc., and if by both Mike and Virginia Milanovich, the amount claimed to be received by each.

5. The place where the money was received.

Count IV

1. The time of day or night that the two defendants, Mike and Virginia Milanovich, unlawfully received the alleged \$14,788.78 stolen money.

2. The person or persons from whom the alleged stolen money was received by Mike and Virginia Milanovich.

3. Whether or not the money was received by both Mike Milanovich and Virginia Milanovich, or either.

4. The amount so received, etc.; and if by both Mike and Virginia Milanovich, the amount claimed to be received by each.

5. The place where the money was received.

oOo

The ground of said motions for each count is that, without such particulars,

(1) The defendants cannot adequately and properly prepare for trial.

(2) To adequately apprise the defendants of the nature and cause of the accusations.

(3) Avoid prejudicial surprise at the trial.

(4) Avoid confusion at, and to clarify the issues for trial.

(5) Protect these defendants from a second prosecution for the same offense.

Varoutsos and Koutoulakos, By Louis Koutoulakos,
200 Southern Building, 2054—14th Street North,
Arlington, Virginia;

and

J. Hubbard Davis, Bank of Commerce Building,
Norfolk 10, Virginia;

Attorneys for Defendants Mike and Virginia Milanovich.

[fol. 8] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 22] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

[Title omitted]

ANSWER TO BILL OF PARTICULARS—
Filed October 24, 1958.

Now Comes, the United States of America, for answer to the Bill of Particulars, filed herein, asserts as follows:

Count 1, Question 1

The exact time of day and night that this money was taken is not known. The approximate time was after dark on the evening of May 16th and prior to dawn on the morning of May 17, 1958.

Count 1, Question 2

Records of the Naval Air Station Navy Exchange, as near as is possible to ascertain, indicate the loss of money to be \$23,952.64. The money was in the following denominations or description:

\$500 in dimes
\$500 in quarters
\$500 in half dollars

(all wrapped and sealed in bag of Seaboard
Citizens National Bank, Norfolk, Virginia)

\$700 in quarters—wrapped
\$300 in half dollars—wrapped
\$150 in dimes—wrapped
\$100 in nickels—wrapped
\$250 in \$5 bills—wrapped

\$1,800 in \$1 bills—wrapped in \$50 bundles
 \$500 in \$20 bills—loose
 \$400 in \$10 bills—loose
 \$150 in \$5 bills—loose
 \$25 in \$1 bills—loose
 \$5,800 in U.S. Government Checks
 \$2,000 in personal checks
 \$9,878.14—composite of currency, checks and bills of
 which make-up is unknown
 \$399.50 in 9 diamond chip rings—retail value

Count 1, Question 4

Defendants were in the general vicinity of the Naval Air [fol. 23] Station and Naval Exchange building at the Naval Air Station at or around the time of the alleged thefts.

Count 1, Question 7

Money was obtained from a locked safe in building Number U-40 at the Naval Air Station. Entry was made through a window into the Naval Exchange section of the building. The safe was locked in a room known as the "safe" room.

Count 1, Question 9

C. A. Seuer, Lieutenant Commander, Navy Exchange Officer, N. A. S., Norfolk, Virginia.

Count 2, Question 1

The exact time of day and/or night this money was taken is not known. The approximate times were between early evening of June 1, 1958, and sometime during the morning or day of June 2, 1958.

Count 2, Question 2

Records of the Naval Amphibious Base Commissary Store, as near as is possible to ascertain, indicate that approximately \$14,788.78 was missing. The money was in the following denominations or description:

<i>Coins</i>	<i>Amount</i>
Half dollars (in two National Bank of Commerce (NBC), Norfolk, bags \$500.00 Each)	\$1,000.00

Quarters (in two NBC, Norfolk, bags, \$500.00 each)	1,000.00
Dimes (in one NBC, Norfolk, bag)	500.00
Dimes (in 60 NBC, Norfolk rolls, \$5.00 per roll)	300.00
Nickels (in two NBC, Norfolk, money bags, \$100.00 each)	200.00
Loose miscellaneous coins from cash drawers which were in the safe	650.00
Total Coins	\$3,650.00

Currency:

\$1.00 bills	1,000.00
\$5.00 bills (17) (In white envelope marked "Party Funds")	85.00

[fol. 24] The remainder of the \$14,788.78 was in currency of unknown denominations and an undetermined number of checks, totaling not more than \$2,000.00.

Count 2, Question 4

Defendants were in the general vicinity of the Little Creek Amphibious Base and the Commissary Store thereof at or around the time of the alleged thefts.

Count 2, Question 7

Entry was gained through a window. A safe was broken into. The safe was located in the Cashier's office of the Commissary Store building on the first floor of the building.

Count 2, Question 9

Raymond A. Jones, Lieutenant Commander, United States Navy, and Donald Day, Chief Warrant Officer, United States Navy.

Count 3, Question 1

The defendants received the money sometime between the late evening hours of May 16th and the early morning hours or day of May 17, 1958.

Count 3, Question 2

Clayton Thomas Grimmer; Benjamin Guerrieri.

Count 4, Question 1

The time that defendants received or took constructive or actual control of the money is not known, however, part of the money stolen from the Amphibious Base was acquired physically by Virginia Milanovich and others on or about the 17th or 18th day of June 1958.

Count 4, Question 2

Clayton Thomas Grimmer; Benjamin Guerrieri; Christ Sofocleous.

L. S. Parsons, Jr., United States Attorney.

Certificate of Service (omitted in printing).

[fol. 63]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

No. Cr. 11-696

UNITED STATES OF AMERICA,

v.

MIKE MILANOVICH.

JUDGMENT AND COMMITMENT—December 30, 1958

On this 30th day of December, 1958 came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty on Count 2 and Not Guilty on Counts 1 and 3 of the offense of

violation of Title 18 U.S.C.A. Section 641 (Theft of Government Property and Receiving Stolen Government Property.)

Defendant's motion for judgment of acquittal sustained as to Count 4.

as charged¹ in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years, unless sooner released by operation of law, on Count 2 of the Indictment.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Walter E. Hoffman, United States District Judge.

The Court recommends commitment to:²

Walkley E. Johnson, Clerk.

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. ³ Insert "in count(s) number

if required. ⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵ Enter any order with respect to suspension and probation. ⁶ For use of Court wishing to recommend a particular institution.

[fol. 64]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 NORFOLK DIVISION
 No. Cr. 11-696

UNITED STATES OF AMERICA,

v.

VIRGINIA MILANOVICH.

JUDGMENT AND COMMITMENT—December 30, 1958

On this 30th day of December, 1958 came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon her plea of Not Guilty and a verdict of Guilty on Counts 2 and 4 and Not Guilty on Counts 1 and 3 of the offense of violation of Title 18 U.S.C.A. Section 641 (Theft of Government Property and Receiving Stolen Government Property.)

as charged in the Indictment and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) Years on Count 2 and Five (5) Years on Count 4, unless sooner released by operation of law; said sentence on

Count 4 to run Concurrently with sentence imposed on Count 2.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Walter E. Hoffman, United States District Judge.

The Court recommends commitment to:

Walkley E. Johnson, Clerk.

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." ² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. ³ Insert "in count(s) number" if required. ⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵ Enter any order with respect to suspension and probation. ⁶ For use of Court wishing to recommend a particular institution.

[fol. 65]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Criminal No. 11-696

UNITED STATES OF AMERICA,

v.

MIKE MILANOVICH, VIRGINIA MILANOVICH, BENJAMIN
THOMAS GUERRIERI, Defendants.

Proceedings in Chambers

Alexandria, Virginia
October 15, 1958

Before Honorable Walter E. Hoffman, United States
District Judge.

APPEARANCES:

L. Shields Parsons, Jr., Esq., United States Attorney,
For the United States of America.

Hubbard Davis, Esq., Bank of Commerce Building, Nor-
folk, Virginia, Attorney for Defendants Mike & Virginia
Milanovich.

Varoutsos & Koutoulakos, Esqs., 2054 N. Fourteenth
Street, Arlington, Virginia, By: Paul G. Varoutsos, Esq.,
of Counsel, and Louis Koutoulakos, Esq., of Counsel, At-
torneys for Defendants Mike & Virginia Milanovich.

[fol. 66]

• • • • •
**COLLOQUY BETWEEN COURT AND COUNSEL AND RULINGS
ON MOTION FOR BILL OF PARTICULARS**

The Court: On the request for a bill of particulars with
respect to Counts Numbered I and II, the Court will order
the United States Attorney to give, in a bill of particulars,

the time of the day or night that these defendants allegedly stole or purloined the quantity of money mentioned in the indictment, but this shall not mean the specific time of day or night and shall be confined merely to an approximation of the time between certain hours.

As to Counts Numbered III and IV, where the same request is contained, if these defendants actually stole the money, they would then be in receipt of stolen money and the answer to—

Mr. Parsons: Judge, I would like to take a short exception to that. It depends, again, on a question of semantics. [fol. 67] The Court: If this money did not belong to Mike and Virginia Milanovich and if they received it with knowledge of the fact that it was not their's—

Mr. Parsons: When you say "received," do you mean that they personally took physical possession of it at a certain time or whether they were in possession of it through their participation through the theft?

The Court: That they were in possession of it by reason of their participation in the entire transaction. That is what the Court means. It is not necessary, I do not believe, to show that these defendants actually ever put their hands on any particular dollar bill, if that is what you mean.

Mr. Parsons: That is the point I want to make.

Mr. Koutoulakos: How about the receiving end, your Honor?

The Court: It is still not necessary. They can receive through an agent just as well as they can receive through their hands.

Mr. Koutoulakos: That is true, but at least they should be put through the proof to tell us how they received it, by an agency or how.

The Court: No, that will come out through the proof in the trial, but if the approximate time is given to you, that is certainly sufficient, as I see it, to enable you to operate under that charge. Now it may be true that if these defendants [fol. 68] did not actually participate in the theft at the time, and by that I mean, active participation, but thereafter, maybe one day or one week or one month later,

did then receive either themselves or through their agent, then the United States Attorney should give a different answer to the requested item 1 under Counts III and IV of the bill of particulars, request for the bill of particulars.

Mr. Koutoulakos: Your Honor, it seems to me before we pass that, very frankly, the Government does not know which way they are going.

Mr. Parsons: We do not?

Mr. Koutoulakos: No, I do not think you do. You have a count of stealing and you have a count of receiving. They are two distinct counts. If they stole, they did not receive, and if they stole, they cannot receive.

The Court: The Court will overrule you on that.

Mr. Koutoulakos: I take an exception.

The Court: I have had that up many times and that is the usual procedure, as a matter of fact, and it is the only safe procedure for the Government to proceed under, to put in a count of theft and a count of receiving and concealing, because—

Mr. Koutoulakos: I agree with your Honor.

The Court: —their proof may fall short on one, which would result perhaps, in a directed verdict in favor of [fol. 69] one of these defendants as to, let us say, the theft charges and leave it solely to the receiving and concealing.

Mr. Koutoulakos: But they could never be convicted of both, is the point I make.

The Court: Whether they can be convicted is another matter. I do not know whether they can be convicted of anything. I do not have that before me at this time.

Now, as to item 2 in the request for bill of particulars as to Counts I and II, I understand the United States Attorney will furnish to defendants' counsel a statement as to the type of money stolen, that is, currency or coin or both.

Mr. Parsons: I actually believe in one of these counts I can give you a specific breakdown almost as to currency and coin, but in one of them I can give you a breakdown as to coin but only generally as to currency. I can give you that. That is no problem.

Mr. Davis: Were checks involved?

Mr. Parsons: When you say "money," I do not construe that to be checks. I do not recall offhand any checks.

Mr. Koutoulakos: He is not charged—the indictment precluded checks.

Mr. Parsons: I know.

Mr. Koutoulakos: Just money.

Mr. Parsons: Just money.

[fol. 70] The Court: As to item 3 in Counts I and II, which is "The manner in which Mike Milanovich and Virginia Milanovich stole the money alleged."

Mr. Parsons: Strictly evidence, your Honor.

The Court: The Court holds that that information is not proper on a bill of particulars as such.

Mr. Koutoulakos: Take an exception.

The Court: As to item 4 in Counts I and II, which reads as follows: "Specifically, what part did each of the defendants, Mike and Virginia Milanovich, play in the alleged theft."

Mr. Koutoulakos: I think your Honor raised that earlier, if you recall, about the aiding and abetting, and so forth.

The Court: If that is what you want, that is one thing. However, item 4 is identical with item 3, which the Court has ruled is a matter of evidence, unless you desire to know whether the Government contends that these parties were aiders and abettors or were principals.

Mr. Koutoulakos: That is exactly right. That is what I had in mind.

Mr. Parsons: Again, you are going to get into a question of semantics and I do not want the Government to be bound as to what the definition of the word "aider" and "abettor" is as opposed to the word "principal."

[fol. 71] Mr. Koutoulakos: It is a legal definition, your Honor.

Mr. Parsons: They are specifically charged as principals in these crimes. The proof of aiding and abetting—the proof is something else again. But under the law, as far as the indictment goes, it makes no difference because they are principals even if they are aiders and abettors.

The Court: Strictly speaking, they could be both.

Mr. Parsons: That is correct, your Honor.

The Court: But what these defendants, I think, would like to know indirectly, since you object to giving it directly, I anticipate, is whether or not the Government contends that either Mike or Virginia Milanovich were actually present at the Air Station or at the Little Creek Amphibious Base where these alleged thefts took place. Now, I anticipate—

Mr. Parsons: Do they want to know whether they were actually, physically in the building or on the premises of the Naval Amphibious Base?

The Court: No. I think they want to know whether they were in the general area of those premises. In other words, a person could drive an automobile, for example, to provide means of getting to the Air Station or getting to Little Creek Amphibious Base and, perhaps, also a means of taking away the individuals who participated in the actual [fol. 72] theft at the building. That person, if he drove an automobile, would be a principal.

Mr. Koutoulakos: They are present, aiding and abetting.

The Court: On the other hand, if a person remained in a home and never went near the Air Station or Little Creek Amphibious Base, but with knowledge of the fact, merely participated, that person, I think, would be then strictly an aider and an abettor.

Mr. Koutoulakos: Accessory before or after.

Mr. Davis: That is what we want to know.

Off the record.

(Discussion off the record.)

The Court: As to item 4 in Counts I and II, as requested by the motion for a bill of particulars, the Court rules that the United States Attorney shall state in general terms whether Mike Milanovich or Virginia Milanovich, or both, played the part of a principal in that they, or either of them, were in the general vicinity of the Naval Air Station or the Little Creek Amphibious Base at the time of the alleged thefts in question, or whether the said Mike Milanovich or Virginia Milanovich, or both, did not go near the premises of the Naval Air Station or the Little Creek Amphibious Base at the time of the alleged thefts in question. [fol. 73] In so doing, the United States Attorney will not

have to specifically state whether it is contended that Mike Milanovich or Virginia Milanovich, or either of them, were, in fact, principals or, in fact, aiders and abettors, but this will give sufficient information so that the defense counsel will know whether there will be any contention that these defendants, or either of them, were in the general locality at the time of the commission of the alleged crimes.

Mr. Koutoulakos: I think number 5, your Honor, has already been given to us, so I do not see any need for it. The other people are these three.

Mr. Parsons: The other three and I want it to be clear that there is a possibility on this Millie Gauger—I cannot tell you now because she has not been indicted, and my main objection to this particular thing would be simply this: We may be in a position, if we have to put it down right, we may have to put her name in there and we will put ourselves in an awkward position and set ourselves up for a possible suit.

Mr. Koutoulakos: We withdraw that, your Honor.

The Court: Item 5 under Counts I and II of the bill of particulars has been withdrawn at the request of defense counsel.

(Discussion off the record.)

[fol. 74] The Court: Under item 6 in Counts I and II, this information has been withdrawn in view of the Court's prior ruling with respect to item 4.

Off the record.

(Discussion off the record.)

The Court: As to item 7 under Counts I and II of the request for a bill of particulars, the United States Attorney has indicated that he will furnish in general terms the means of entry, that is, whether it was a break in or whether entry was procured by the use of a key or in some other general manner, and the United States Attorney shall further state from what part of the particular premises the money was stolen, namely, was it stolen from a safe or a cabinet and in general terms where that particular safe or cabinet may have been located.

Mr. Parsons: No objection to that, your Honor.

The Court: And that information, if furnished, is sufficient, according to counsel for defendant.

All right, off the record.

(Discussion off the record.)

The Court: As to item 8 in Counts I and II of the request for a bill of particulars, neither counsel is prepared to advise the Court with respect to the law and, accordingly, [fol. 75] the ruling thereon is deferred. Defense counsel have indicated that they would be willing to have the names and last known addresses of such persons who were interviewed during the course of the investigation with the understanding that the United States Attorney would not be bound to produce these witnesses, and if not produced, that no comment would be made with respect to the fact that their names and addresses had been included in the bill of particulars, but as the Court is not advised with respect to the applicable law, the Court will defer ruling thereon.

Counsel will give the Court the authorities with respect thereto within five days from this date, and the Court will then rule.

(Discussion off the record.)

The Court: As to item 9 under Counts I and II of the request for a bill of particulars, the United States Attorney has advised that he will give the name of the person or persons who may have been in charge of the money, that is, charged with the responsibility of the money as such, but this does not suggest that this individual was the one who counted the money or that this individual was the one who last had actual possession of the money prior to the alleged theft.

All right, let's go off the record.

(Discussion off the record.)

[fol. 76] The Court: As to item No. 2 in Counts III and IV of the bill of particulars, the United States Attorney shall state the name of the person or persons from whom it is contended that these defendants, Mike Milanovich and Virginia Milanovich, either actually or constructively re-

ceived the alleged stolen money in question, but it shall not be necessary to specifically state any physical transfer of the money from any particular individual to either particular defendant.

Off the record.

(Discussion off the record.)

The Court: With respect to item No. 3 in Counts III and IV, under the motion for a requested bill of particulars, the Court is of the opinion that this inquiry can be sufficiently answered under item No. 2, if the United States Attorney will designate which particular defendant may have been involved in the alleged actual or constructive receipt of the alleged stolen money, or if both particular defendants were involved the United States Attorney shall so state.

As to item No. 4 in Counts III and IV of the request for a bill of particulars, the Court is of the opinion that this is a matter of evidence and argument and the United States Attorney is not required to particularize in what manner the money, if received, was divided between the [fol. 77] various parties participating.

Mr. Koutoulakos: Take an exception to that.

The Court: Off the record.

(Discussion off the record.)

The Court: As to item No. 5 under Counts III and IV of the motion for a bill of particulars, of course, it is fundamental that the Government must prove that the alleged act occurred within the jurisdictional limits of the Eastern District of Virginia, but other than that, the Court is of the opinion that the United States Attorney is not required to state at what particular place the money was allegedly received by the defendants and it is assumed, of course, that it will not be necessary for him to further allege that the money was received within the Eastern District of Virginia as that is alleged in the indictment and constitutes a fundamental part of the proof.

Off the record.

(Discussion off the record.)

The Court: An off the record discussion was had with respect to the defendant's motion for discovery and inspection, which motion was this day filed.

The Court has directed counsel to submit certain authorities within five days from this date in order that the [fol. 78] Court may rule upon the same.

Is there any request for oral argument on that motion?

Mr. Koutoulakos: I do not believe it is necessary.

Mr. Parsons: I do not believe it is necessary.

○ The Court: Oral argument is waived.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

Criminal No. 11-696

UNITED STATES OF AMERICA,

v.

MIKE MILANOVICH, VIRGINIA MILANOVICH, BENJAMIN
THOMAS GUERRIERI, Defendants.

Transcript of Trial Proceedings

Newport News, Virginia
December 1, 2, 3, 4, 5,
6, 8, 9 & 30, 1958

Before Honorable Walter E. Hoffman, United States District Judge, and a jury.

[fol. 2] **APPEARANCES:**

L. S. Parsons, Jr., Esq., United States Attorney, For the United States of America.

J. Hubbard Davis, Esq., Attorney for Defendants Mike & Virginia Milanovich, Bank of Commerce Building, Norfolk, Virginia.

Varoutsos & Koutoulakos, Esqs., Attorneys for Defendants Mike & Virginia Milanovich, 2054 N. Fourteenth

Street, Arlington, Virginia, By: Paul G. Varoutsos, Esq., of Counsel, and Louis Koutoulakos, Esq., of Counsel.

Defendants In Propria Persona.

[fol. 3]

COLLOQUY BETWEEN COURT AND COUNSEL

December 1, 1958

The Clerk: Any uncontested motions? Criminal No. 11-696, United States against Mike Milanovich, Virginia Milanovich and Benjamin Thomas Guerrieri. Is the Government ready in that case?

Mr. Parsons: The Government is ready, your Honor.

The Clerk: Is the defense ready in that case?

Mr. Koutoulakos: The defense is ready.

Mr. Parsons: If your Honor please, I believe there is one preliminary matter that is uncontested. It is the arraignment of Millie Gauger, your Honor.

After the arraignment of the defendant, Millie Gauger, in Criminal No. 11-764, the trial of the case of Criminal No. 11-696 thereupon continued.)

Mr. Koutoulakos: Could I approach the Bench? Mr. Parsons.

[fol. 4] Mr. Parsons: Yes.

(Thereupon, counsel approached the Bench.)

(The jury was impaneled and sworn.)

The Court: Gentlemen, are you ready to proceed?

Mr. Koutoulakos: We are, your Honor, and I would like to excuse the jury. I want to address the Court.

The Court: All right. The lady's name is Mrs. Knight; is that correct? All right, if you will step out for just a second.

(The jury retired to the jury room at 11:06 a.m.)

Mr. Koutoulakos: Your Honor, first, I would like to have the witnesses sworn and excluded and then I would like to make a motion for the Government to elect whether or not they are proceeding on larceny or receiving. I feel they are inconsistent crimes and I feel they can suffer only

one conviction and I think the Government should take the position what case they are going to try, whether it is the larceny charge or receiving charge.

The Court: I will grant your motion to exclude the witnesses. We swear the witnesses here separately. I will deny the motion as to requiring the Government to elect as to whether they are going to proceed on the larceny [fol. 5] charge or the receiving and concealing.

Mr. Koutoulakos: I take an exception to that, your Honor.

Mr. Parsons: The Government would like to retain in the courtroom Mr. Hugh J. Smith as the Government's representative.

The Court: Mr. Smith may be designated as the Government's representative to remain in the courtroom. Of course, the defendants may remain and will remain. As to the other witnesses in the case, with the exception of the witness who was arraigned here today, Millie Gauger, her counsel has stated that he will not permit her to testify any more than, perhaps, to give her name and under those circumstances, if she cares to remain in the courtroom, I would grant her that permission.

Mr. Parsons: No objection on the part of the Government, your Honor.

Mr. Koutoulakos: No objection on our part.

The Marshal: All witnesses in this case come this way, please.

(The witnesses were excluded from the courtroom.)

Mr. Koutoulakos: Your Honor, inasmuch as the Government—and they are entitled to it—to have a representative, [fol. 6] we would like to have our investigator sit with us.

The Court: Motion denied. You have your defendants and they are your representatives.

Mr. Koutoulakos: Now, your Honor, Mr. Parsons has—and we have no objection—a request to have the witnesses sworn to be excused until they are subject to call. Certainly, we do not object to that.

Mr. Parsons: No. I have one witness who is in school, your Honor, and I want him to stay in school until the time

he is needed so we can be sure we will get him here and we have to have about an hour's notice to get him over here.

The Court: There is no objection to that?

Mr. Parsons: No, sir.

Mr. Koutoulakos: No objection.

The Court: I take it there are no other witnesses in the courtroom then, am I correct in that? No other witnesses.

All right. Are you ready to have the jury called back?

Mr. Koutoulakos: Pardon, your Honor?

The Court: There are no other preliminaries, I take it?

Mr. Koutoulakos: No, your Honor.

The Court: Call the jury, Mr. Marshal.

[fol. 35] MARVIN E. STEFFEN, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Steffen, would you state your full name, sir, your occupation and where you live, sir.

A. Marvin E. Steffen. I am a special agent of the Federal Bureau of Investigation in Norfolk.

Q. In your capacity as a special agent, did you make certain investigations relative to a theft at the Amphibious Base?

A. I did.

[fol. 43] By Mr. Parsons:

Q. I wonder if you could identify this particular sledge hammer?

A. This sledge hammer was found in front of the safe, which had been broken into at the Commissary at Little Creek, the morning we arrived there.

Q. I wonder if you would describe the handle of that, sir?

[fol. 44] A. Well, this handle has apparently been—

Mr. Koutoulakos: Well now, your Honor, I am going to object to any conclusions on his part. The jury is capable of its own to see—

Mr. Parsons: For the purpose of the record, your Honor, I wonder if you could just describe the top, the end of the handle.

The Court: I do not mind Mr. Steffen describing it, but when we get into the word "apparently", unless he is a qualified expert on the subject of tools of this nature, I do not know whether it would be admissible. He used the word "apparently". Now, if it is perfectly obvious, then anybody can see it, but if it is his opinion, you would have to go a little bit further and qualify him.

Mr. Parsons: That is all right, sir. I think it is apparent on the face of it.

The Government would like to offer this as Government's Exhibit No. 4.

The Court: Let the sledge hammer be marked Government's Exhibit No. 4.

[fol. 45] (The sledge hammer found at the Little Creek Amphibious Base as marked and received in evidence as Government's Exhibit No. 4.)

By Mr. Parsons:

Q. Mr. Steffen, I wonder if you find in there a hatchet, sir?

The Court: All of these tools now presently are in connection with the alleged theft at Little Creek?

Mr. Parsons: Little Creek, that is correct, sir.

A. This hatchet was found on the floor in front of the safe at Little Creek.

Mr. Parsons: All right, sir. Government's Exhibit No. 5.

The Court: Let it be admitted.

(A hatchet found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 5.)

By Mr. Parsons:

Q. I wonder if you can find a wrecking bar or a floor ripping bar identified as a standard—

A. This floor ripping bar was also found in the cashier's [fol. 46] office near the safe at Little Creek.

Mr. Parsons: All right, sir. Government's Exhibit No. 6.
The Court: Let it be admitted.

(The wrecking bar found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 6.)

By Mr. Parsons:

Q. I wonder if you would look for a screwdriver, twelve inches long, with the word "Waco C-58" on it, twelve inch blade?

A. This screwdriver was also found near the safe in the cashier's office at Little Creek.

Mr. Parsons: Government's Exhibit No. 7.

The Court: Let it be admitted.

(The screwdriver found at Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 7.)

By Mr. Parsons:

Q. Can you find another screwdriver there, sir, with a yellow plastic handle approximately seven and a half inches long, sir? Where was that found?

[fol. 47] A. This was also found near the safe in the cashier's office at Little Creek.

Mr. Parsons: All right, sir. This is Government's Exhibit No.—

The Court: 8.

Mr. Parsons: 8.

The Court: Let it be admitted.

(The screwdriver approximately seven and a half inches long found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 8.)

By Mr. Parsons:

Q. Do you also find there another screwdriver with a wooden handle about eleven and a quarter inches long, sir?

A. This is an Irwin screwdriver found near the safe in the same office.

Q. Do you find another screwdriver, Irwin screwdriver, nine and a quarter inches long?

The Court: The screwdriver just referred to by the witness will be marked Government's Exhibit No. 9.

Mr. Parsons: 9.

[fol. 48] (The screwdriver with the wooden handle found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 9.

A. This is an Irwin screwdriver, about nine and a fourth inches long, found near the safe in the cashier's office at Little Creek.

Mr. Parsons: Government's Exhibit No. 10.

The Court: Let it be marked.

(The screwdriver approximately nine and one-fourth inches long found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 10.)

By Mr. Parsons:

Q. Do you find in there, sir, a keyhole saw?

A. This saw was found near the safe, also at Little Creek.

Mr. Parsons: Government's Exhibit No. 11.

The Court: Let it be marked.

(The keyhole saw found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 11.)

[fol. 49]

By Mr. Parsons:

Q. Do you find in there, sir, a steel punch nine and a half inches long, marked 74?

A. This was also found near the safe in the Navy Exchange at Little Creek.

Mr. Parsons: Government's Exhibit No. 12.

A. The Commissary.

(The Steel punch found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 12.)

By Mr. Parsons:

Q. Sir, do you find, also, a Stanley wood chisel with a yellow and black plastic handle?

A. This wood chisel was also found near the safe at Little Creek.

Mr. Parsons: Government's Exhibit No. 13.

The Court: Let it be marked.

(The Stanley chisel found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 13.)

[fol. 50] By Mr. Parsons:

Q. Mr. Steffen, do you find there, sir, a ten-inch pipe wrench?

A. This was also found in the cashier's office near the safe at Little Creek.

Mr. Parsons: Government's Exhibit No. 14.

The Court: Let it be marked.

(The pipe wrench found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 14.)

By Mr. Parsons:

Q. Sir, do you find a pair of six-inch side cutter pliers, with the words "Peri-Italy", P-E-R-I Italy?

A. Yes, sir. These pliers were also found near the safe at Little Creek.

Mr. Parsons: Government's Exhibit No. 15, I believe.

The Court: Let it be marked.

(The six-inch side cutter pliers found at the Little Creek Amphibious Base were marked and received in evidence as Government's Exhibit No. 15.)

[fol. 51] By Mr. Parsons:

Q. Did you find also in that, sir, a ten-inch hacksaw blade, sir?

A. Yes, sir. This was found beside the safe at Little Creek.

Mr. Parsons: Government's Exhibit No. 16, if your Honor please.

The Court: Let it be marked.

(The hacksaw blade found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 16.)

By Mr. Parsons:

Q. Do you find, sir, a safe dial in there anywhere, sir?

A. This dial was found near the safe at—that had been broken into at Little Creek.

Q. What is the purpose of the paper around it, Mr. Steffen?

A. I think the paper actually fits behind—was the padding in there. I don't think it belongs on the front of it at all.

Mr. Parsons: Government's Exhibit No. 17.

[fol. 52] By Mr. Koutoulakos:

Q. I did not understand that. Is this added on?

A. No, I think that that was found with it and probably—

Q. It was with it?

A. It was found there.

(The safe dial found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 17.)

By Mr. Parsons:

Q. One safe handle?

A. This is the handle that was found near the safe that had been broken into at Little Creek.

Q. Do you have, sir, one Ohio Sales Tax Stamp?

Mr. Parsons: 18, I believe.

The Court: Government's Exhibit No. 18; I believe, is the safe handle.

(The safe handle found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 18.)

By Mr. Parsons:

Q. Yes, sir.

A. Yes, sir, here is an envelope containing an Ohio Sales [fol. 53] Tax slip that was found on the floor near the left front door of the safe in the cashier's office.

Mr. Parsons: All right, sir. We would like to offer that as Government's Exhibit No.—

The Court: 19.

Mr. Parsons: 19.

(The Ohio Sales Tax slip found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 19.)

By Mr. Parsons:

Q. Do you find there a nameplate of any kind, sir?

A. Yes, sir. Here is a nameplate found near the safe. It contains the name "Sargent & Greenleaf Company, Rochester, New York, U. S. A."

Mr. Parsons: I would like to offer this as Government's Exhibit No. 20.

The Court: The nameplate will be marked Government's Exhibit No. 20.

(The nameplate found at the Little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 20.)

[fol. 54] By Mr. Parsons:

Q. Do you have cash boxes, sir?

A. If it is all right with the Clerk, we probably could leave this right in here. It is quite bulky. It is not—

The Court: I think it is a fair statement, the furthest you keep those things away from the Clerk, the better off.

Mr. Koutoulakos: Your Honor, we do not object to it as being one exhibit.

The Court: All right.

By Mr. Parsons:

Q. I wonder if you could identify, sir, where they were found and approximately in what area?

A. These are cash boxes that were found in front of it and alongside, on the table, near the safe, at the time that we entered the cashier's office.

Mr. Parsons: Exhibit No.—

The Clerk: 21.

The Court: Exhibit No. 21. And, Mr. Steffen, can you count those cash boxes there—

The Witness: Yes, sir.

The Court: —readily, without too much difficulty. If it [fol. 55] is too difficult, do not bother. I just wanted to get it for the record, how many there were.

(The cash boxes found at the Little Creek Amphibious Base were marked and received in evidence as Government's Exhibit No. 21.)

By Mr. Parsons:

Q. I will ask you and see if you can locate a wrecking bar twenty-seven inches long?

The Court: We are still dealing with Little Creek?

Mr. Parsons: Little Creek Amphibious Base, yes.

By Mr. Parsons:

Q. I wonder if you could identify where that was found?

A. This wrecking bar was found in the cashier's office near the safe at Little Creek.

Mr. Parsons: Government's Exhibit No. 22.

The Court: Let it be marked.

Mr. Parsons: All right, sir.

(The wrecking bar found at the Little Creek Amphibious Base was marked and received in evidence as Government's [fol. 56] Exhibit No. 22.)

By Mr. Parsons:

Q. Do you find a flexible spout, sir? All right, sir. Where was that spout found?

A. This funnel, with a flexible spout, was found just outside the door to the cashier's office, where the safe had been broken into at Little Creek.

Mr. Parsons: Government's Exhibit No.—

The Court: Let it be marked Government's Exhibit No. 23.

Mr. Parsons: 23, all right, sir.

(The funnel with the flexible spout found at the little Creek Amphibious Base was marked and received in evidence as Government's Exhibit No. 23.)

By Mr. Parsons:

Q. Mr. Steffen, did you also recover a metal suitcase?

A. Yes: This metal suitcase was found behind the door that opened into the cashier's office at Little Creek, which would place it directly in front of the safe which had been broken into.

[fol. 72] Mr. Parsons: I would like to call Mr. Thompson, I believe.

The Court: I understood, with respect to Mr. Steffen, gentlemen, that you were putting him on only at this time to identify these exhibits?

Mr. Parsons: That is correct, sir, and he will be recalled for another purpose.

The Court: He will be recalled.

Mr. Parsons: And Mr. Steffen should remain out of the courtroom. Mr. Thompson, he is with the Motor Vehicle Division.

[fol. 73] ROBERT E. THOMPSON, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Mr. Koutoulakos: Now, your Honor, at this point, I might make this observation to the Court. Of course, I realize that it is difficult to control this, but we are requesting the Court, in your discretion, whatever you can do, to keep these witnesses, who have testified, from mingling with other witnesses, sometimes not deliberately, but maybe unconsciously, something that has been said that has been testified to and—

The Court: Mr. Koutoulakos, I do not think the Court could possibly police such a situation as that; and, after all, people generally find out what is testified to in a general way in almost all cases. The fine points of the questioning are the matters that, of course, are relevant and the main purpose for separating witnesses, but there is not much that I can do about the situation. After all, I think you have a right and your associates have a right to talk to witnesses. [fol. 74] Mr. Parsons has a right to talk to witnesses. No one has the right to persuade a witness, of course.

Mr. Koutoulakos: That is right. That is the point I was making.

The Court: But I think you have a perfect right to talk to witnesses. Despite my size, I am still only one man and I cannot be in more than one place at one time and I do not think there is much that I can do about it.

Mr. Koutoulakos: All right, sir. You understand the problem.

Direct examination.

By Mr. Parsons:

Q. Mr. Thompson, I believe you are here in reply to a subpoena to Mr. Lamb, the Commissioner of the Division of Motor Vehicles; is that correct?

A. Yes, I am.

Q. I wonder if you would state your name and your occupation, sir?

A. Robert E. Thompson. I am supervisor of the Division of Motor Vehicles, Eastern District of Virginia.

Q. A subpoena duces tecum was issued to Mr. Lamb to [fol. 75] bring with him the registration of and make and year of automobile bearing 1958 Virginia license 215-815, and the name and address of the listed owner of the said automobile. Did you bring such a document, sir?

A. Yes, sir, I did.

Q. I wonder if I might—

A. The original and a photostatic copy.

Mr. Koutoulakos: Your Honor, we make the same observation—subject to the connection, we make the same objection in connection with the relevancy. I assume it will be connected up somehow.

The Court: I assume there will be some connecting links, Mr. Koutoulakos. Thus far, I am not commenting on this exhibit. There is nothing to connect—

Mr. Parsons: Subject to connection, your Honor, of course, always.

The Court: Yes.

Mr. Parsons: To save time only for the purpose of those people coming on who produce records subject to—

The Court: Yes, I think that is reasonable, and I will tell the jury, at this time, that in connection with these [fol. 76] records and exhibits, and so forth, that witnesses have to come here for some distances at some time, and it is a great inconvenience to keep them in order and, perhaps, the evidence is being introduced somewhat a little bit out of order for the purpose of enabling these witnesses to leave.

Mr. Koutoulakos: What was the number that you said you wanted?

Mr. Parsons: The license number is 218-215.

The Court: 215?

Mr. Parsons: 218-815 is the number I gave.

The Court: 218-815?

Mr. Parsons: The correct number is 218-815.

The Court: That is what you intended to ask the witness?

Mr. Parsons: That is what I thought I asked, 218-815.

(The reporter read back the last question.)

The Court: The court reporter disagrees with you, and [fol. 77] so do I; so it is your mistake in that case and you are overruled.

Mr. Parsons: That is the only number I am asking about. I would like to offer this as Government's Exhibit No. 35, I believe.

The Court: Government's Exhibit No. 35.

(The application for title and certificate of title of a 1956 Oldsmobile was marked and received in evidence as Government's Exhibit No. 35.)

By Mr. Parsons:

Q. Mr. Thompson, I wonder if you would state—and you have, I believe, the originals in your possession at this time—the name and address of the listed owner of the automobile bearing License No. 218-815, Virginia?

A. 218-815, it is Mike Milanovich, 8032 Webb Court, Norfolk, Virginia.

Q. What make and model car is therein described?

A. It is a 1956 Oldsmobile, four-door sedan, motor number 569W3062.

Mr. Parsons: Thank you very much, sir. Answer any questions they might have.

[fol. 283] Mr. Parsons: I would like to call Mr. Herman Drummond.

HERMAN F. DRUMMOND, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Drummond, state your name and your occupation, sir.

A. Herman F. Drummond, Jr., Special Agent, Federal Bureau of Investigation.

Q. Mr. Drummond, did you participate in the investigation of certain allegations made against Virginia Milanovich and Mike Milanovich?

A. I did.

Q. In the course of that investigation, did you have occasion to contact Mike Milanovich?

A. I did.

Q. In the course of that investigation, did you also take the fingerprints of Mike Milanovich?

A. I did.

Q. Do you have such a fingerprint card with you, sir?

A. Yes, sir.

Q. Were these fingerprints taken by you personally, Mr. Drummond?

A. Yes, sir.

Q. Is Mike Milanovich here in this courtroom?

A. Yes, sir.

Q. Where is he?

A. Sitting over on the left-hand side of the courtroom, in back of counsel.

Q. Is he the individual from whom you took these fingerprints?

A. Yes, sir.

Mr. Parsons: The Government would like to offer this as Government Exhibit No. 57.

[fol. 285] Mr. Koutoulakos: Your Honor, before it is offered, I would like to know the circumstances, and so forth. I am sure they just did not invite him in and have a little drink together and say, "Give me your fingerprints." I would like to know what it is about.

The Clerk: I think this is 55.

The Court: 57. I will tell the jury that anyone arrested for a crime is ordinarily fingerprinted in the ordinary course of investigation.

Mr. Koutoulakos: I agree with that, but if he establishes the man was arrested, I agree with your Honor a hundred percent.

Mr. Parsons: I will ask the question.

By Mr. Parsons:

Q. When were these fingerprints taken, Mr. Drummond?

A. After the arrest of Mike Milanovich.

Q. What date was he arrested on, Mr. Drummond?

A. June 19th.

Mr. Koutoulakos: Good enough, your Honor.

Mr. Parsons: I would like to reoffer it in evidence.
 [fol. 286] The Court: Let the fingerprint card be admitted as Government's Exhibit No. 57.

(The fingerprint card of Mike Milanovich was received and marked in evidence as Government's Exhibit No. 57.)

Mr. Parsons: If your Honor please, I anticipate that I will call Mr. Drummond back at a later time for other evidence, but after cross-examination on this particular point, I would like to ask him to return back out in the hall, sir.

The Court: Do you wish to question him any further on this?

Mr. Koutoulakos: Not at this time, your Honor.

The Court: I understand you want Mr. Drummond to remain?

Mr. Parsons: Yes, sir.

[fol. 287] Mr. Parsons: I would like to call Mr. Francis M. Leapley.

FRANCIS M. LEAPLEY, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Leapley, I wonder if you would state your full name and your address.

A. Francis M. Leapley. I live in Hyattsville, Maryland.

Q. By whom are you employed?

A. By the Federal Bureau of Investigation.

Q. What is your capacity there, sir?

A. I am titled as a fingerprint examiner.

Q. Where are your official headquarters?

A. In Washington, D. C.

Q. How long have you been so employed, sir?

A. About fourteen years and six months.

Q. Have you ever appeared to testify as a fingerprint expert in court before?

A. Yes, sir, I have.

Q. What are your official duties?

A. Well, my main duties consist of receiving evidence, [fol: 288] processing the evidence for latent impressions, fingerprints, palmprints, footprints, photographing the impressions, comparing them with inked impressions, other latent impressions, setting forth the findings in a report and, when called upon, presenting the findings that we make in court.

Q. All right, sir. I wonder if you would explain to the jury what a latent print is?

A. Well, a latent print is an impression of a finger, a palm—it could be of a foot—that is made by the perspiration or sweat that is contained on the finger and deposited on an object when the finger comes in contact with it.

Now, most latent impressions are invisible. In other words, you cannot see them with the naked eye, but with the use of powders—fingerprint powders, we call them—but with chemicals, we can bring them up, photograph them, compare them with other latent impressions, inked impressions, or the like.

Q. I wonder if you would tell the jury what an inked fingerprint is?

A. Well, an inked fingerprint is a fingerprint that is obtained by placing an inked film imprint on the underside of the finger. The ink adheres to the raised portions of the fingers, the so-called ridges. When this is placed on an [fol: 289] oblique on a piece of paper, it forms an outline of the ridges of the fingers. That is exactly what an inked fingerprint is.

Q. All right, sir. I hand you Government's Exhibit No. 23, sir. I ask you, sir, have you ever examined that object before, sir?

A. Yes, sir, I have.

Q. From where did you receive that object, sir?

A. I received it in my office in Washington, and I processed it on the 11th of June of this year.

Q. What is your examination or did you examine it, sir?

A. I examined it for latent impressions, and through the use of fingerprint powders, I developed one latent fingerprint on the inside of the funnel here (indicating).

Q. Did you prepare a photograph of that print?

A. Yes, I did.

The Court: That exhibit, for the purpose of the record, is what has been referred to as a funnel with a flexible spout; is that correct?

By Mr. Parsons:

Q. I hand you Government Exhibit No. 57, Mr. Leapley. Have you examined that exhibit, sir?

[fol. 290] A. Yes, sir, I have. This was received in our section on the 24th—I handled it actually on the 24th of June 1958.

Q. Did you compare the fingerprint on the Government Exhibit with the fingerprints on the fingerprint card—that is, Government Exhibit No. 23?

A. Yes, sir, I did.

Q. What were the results of your comparison?

A. Well, I found that the latent impression developed on the inside of the flexible spout funnel here and the finger impression—the inked impression appearing in the No. 7 fingerblock of this fingerprint card, which contains the name Mike Milanovich which was taken on the 19th of June, were made by one and the same person.

Q. All right, sir. Now, is it possible, Mr. Leapley, in your opinion, for two persons to have the same fingerprint?

A. In my opinion, sir, it is not possible.

Q. Did you have enlargements made of these so that you can illustrate to the jury how you came to this conclusion?

A. Yes, sir, I have. Your Honor, with your permission, I would like to stand.

[fol. 321] Mr. Parsons: I would like to call Commander Jones, please.

RAYMOND ALFRED JONES, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Commander Jones, I wonder if you would state your name and where you are presently stationed.

A. My name is Raymond Alfred Jones. I am presently enroute to my new station, which will be Guam. So I have no present station.

Q. Where were you stationed prior to your recent trans-[fol. 322] fer?

A. The Commissary Store, Naval Amphibious Base, Little Creek, Virginia.

Q. When did you assume your duties there, sir?

A. On 1 June 1955.

Q. What was your capacity or title at that Store, sir?

A. I was the officer in charge.

Q. And by whom were you assigned to that duty?

A. By the Chief of the Bureau of Naval Personnel.

Q. Is the Commissary Store a part of the United States Navy, sir?

A. It is.

Q. And is it operated by funds of the United States Navy?

A. Yes, it is.

Q. Commander Jones, I call your attention to the day of June 1st, sir, and ask you if you were at the Commissary Store on that day, sir?

A. June 1st was Saturday, I believe, I was at the Store all that day up until about three o'clock in the afternoon.

Q. During that day, sir, what—

The Court: June 1st was a Saturday, was it?

[fol. 323] The Clerk: June 1st was Sunday.

The Court: June 1st was Sunday.

The Witness: If it was Sunday, no, I was not at the Store.

By Mr. Parsons:

Q. I call your attention, then, sir—that was my mistake, I am sorry—to May 31st.

A. Yes, that Saturday, I was at the Store that day.

Q. All right. What did your duties consist of on that day, sir?

A. Well, in addition to being officer in charge, my cashier was on leave and also my assistant was on leave and I had taken over the cashier's safe for safekeeping of the funds until she returned on Tuesday.

Q. When you say the "cashier's safe," what does that mean, sir? I am not familiar with that term.

A. Well, we have two safes; one is the main safe, which my officer assistant has the combination to that safe, where the bulk of the funds are maintained. Then the cashier, or the title she goes by is a cash accounting clerk, she is a bonded assistant, civilian, who makes the pickup of the cash from the cash registers and makes the deposits. She has a safe which she has the combination to, and in her absence, either my officer assistant or I take the combination of the safe—have our own combination of that safe until she [fol. 324] returns.

Q. Now, on this particular Saturday, sir, who, if anyone, placed money in the safe, sir—in the cashier's safe?

A. I was the only one that placed money in the safe on Saturday.

Q. Do you know, sir, approximately how much money was placed in the safe on Saturday, sir?

A. Yes, it was all of the day's receipts, which was approximately \$10,000.00. I don't have the exact figure. Until those tapes could be sent out this afternoon, then I could give you the exact figure—

Q. All right, sir. Were you called back to the station on, I believe, June 2nd, sir?

A. Yes, I was.

Q. What did you find when you arrived at that time?

A. When I arrived, the front door was being guarded by a Sergeant—I believe he was a Sergeant from the Base Police—and there were several policemen at the back of the store, and I opened the store and as I walked in, in front of the—my office, there was quite a few tools scattered around, and as we walked—as we approached the office, I could see that the safe door was open. It had been broken open and the office was cluttered with papers and, oh, miscellaneous tools.

[fol. 325] Q. What action was taken by you, if any, at that time?

A. At that time, as I walked in, the Chief of Police from the Base arrived on the scene—the Security Officer was on the scene—and they immediately notified the Federal Bureau of Investigation and the Commanding Officer of the Base.

Q. Did you, at that time, see, or examine, or have a chance to see, what you call, the big safe, sir?

A. Yes. We walked up to the top of the stairway and looked at the big safe. The—the front part of the safe had been removed. The dial had been removed, and there was a hole that had been burned—that appeared to have been burned, because there were burn marks on the front of the safe, but it could not be determined that the safe had been broken into at that time.

Q. I hand you Government's Exhibit No. 2-A, sir, and ask you if this is a picture of the safe, of the main safe, there, sir?

A. Yes, it is.

Q. All right.

By the Court:

Q. The approximate sum of \$10,000.00 that you have referred to, in what safe did you deposit that money on May 31st?

[fol. 326] A. That was in the cashier's safe. That was the only safe I had the combination to.

Q. Was that the safe that was broken into?

A. Yes, sir, it was.

By Mr. Parsons:

Q. Did you have an opportunity to look at that safe too, sir?

A. Yes, that was the first safe I saw, and it was—the doors—it has a double door on it and the doors were wide open.

Q. In your capacity as officer in charge of the Commissary Store, did you conduct a survey or investigation to determine the amount lost?

A. Not immediately, because we did not have access to the large safe. The tumbler had been removed from the safe and there was no way of opening the safe. We had to wait until the F. B. I. completed their investigation of the—or see if there was any fingerprints before we could get into the safe. Then we had to get a safe expert to come out and open the large safe before we could determine the exact amount that was missing.

Q. From that large safe, sir, was anything found to be missing?

A. No, there was no funds missing from the large safe.

[fol. 327] Q. From the other safe, was there a determination made at a subsequent date as to the actual amount lost?

A. Yes, sir, there was.

Q. All right, sir. I wonder if you would tell the jury what amount was lost and how it was determined?

A. Well, the loss was thirteen—

Mr. Koutoulakos: I think it should—

The Court: Did this gentleman make the determination?

By Mr. Parsons:

Q. Did you make the determination or was it done under your orders and your authority?

A. It was done under my orders and done by the cashier and my assistant.

Q. Did you participate also?

A. As an observer.

Q. I wonder if you would state the results of that?

A. The results indicated that a sum of \$14,788.78 was missing.

Q. Do you recall—if you do not, that is perfectly all right—but do you recall how any of this change was wrapped, sir?

A. Well, the change was wrapped with paper wrappers with the National Bank of Commerce printed on each wrapper.

[fol. 328] Q. Was that the regular bank to which you made the deposits?

A. Yes, sir, it was.

Mr. Parsons: All right, sir. Answer any questions counsel might have.

[fol. 338] MICHAEL T. HARBROOK, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

[fol. 339] Direct examination.

By Mr. Parsons:

Q. Mr. Harbrook, will you state your name, sir, where you live and your occupation.

A. My name is Michael Thomas Harbrook; I live at 538 Maryland Avenue, and I am currently employed at the Naval Air Station as a guard supervisor, GS-5.

Q. Were you, at any time, in charge of the issuing or control of decals at the Naval Air Station?

A. I have just completed a tour of sixteen weeks where I was in charge of the decal and identification section of the Naval Air Station.

Q. When did you stop being in charge of it?

A. Oh, my duties terminated there Friday, last Friday.

Q. In your capacity as being in charge of that office, do you have supervision and control of the records in there, sir?

A. Yes, sir.

Q. Did you have supervision and control of the personnel who made out the slips to issue decals?

A. Yes, sir.

Q. Did you maintain custody of those records after they were once made out?

A. They are in the proper file.

[fol. 340] Q. All right, sir. I believe Mr. Massengill was here yesterday. And I show you Exhibit No. 36, and ask you if you can identify that, sir?

A. Yes, sir, I can identify this.

Q. Now, before you say anything about it, in your tour of duty during the sixteen weeks was this one of the records under your custody and control and under your supervision?

A: Yes, sir.

Q. What is that record?

A. It is an application for a Station decal, which permits the applicant to unrestricted access to the Station if he meets all of the requirements as laid down by the Commanding Officer.

Q. What is the number on that and what is the name signed to it, sir? A. The number on that is—it's a CPO decal, 3525, and it is issued to the applicant Milanovich, first name Mike, middle initial none.

Q. Is it signed by anyone?

A. There is a signature on this application.

Q. What does the signature read?

A. The signature reads Mike Milanovich.

Mr. Parsons: All right, sir. Answer any questions that Mr. Koutoulakos might have.

[fol. 341] Mr. Koutoulakos: He is the keeper of the records.

The Court: You desire now to introduce this in evidence?

Mr. Parsons: Yes, sir, I do.

The Court: Let Exhibit No. 36 be now marked in evidence.

(The document previously marked as Government's Exhibit No. 36 for identification was marked and received in evidence as Government's Exhibit No. 36.)

Mr. Koutoulakos: No questions.

The Court: Thank you, Mr. Harbrook. May Mr. Harbrook be excused?

Mr. Parsons: Yes, sir.

The Witness: Thank you.

Mr. Parsons: I would like to call Mr. Floyd Barwick.

FLOYD S. BARWICK, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

[fol. 342] Direct examination.

By Mr. Parsons:

Q. Mr. Barwick, would you state your name, sir, where you live and your occupation.

A. Floyd S. Barwick, Norfolk, hardware merchant.

Q. I wonder if you would speak a little louder so these gentlemen here can hear you, sir. What business do you operate, sir?

A. Retail hardware.

Q. And where is that located, sir?

A. 7921 Tidewater Drive.

Q. What is the name you operate under?

A. Barwick's Hardware.

Q. I call your attention, sir, to the evening of May 29th, sir, and ask you if you recall the events of that evening, sir?

A. Yes, sir.

Q. I wonder if you would relate to the jury if anything unusual happened, sir?

A. In regards to the sale of certain merchandise?

Q. Certain merchandise.

A. Late in the afternoon?

Q. Yes, sir, around six o'clock, I believe.

A. I had three customers that came in and wanted a mall.

[fol. 343] Q. Is a mall the same as a sledge hammer?

A. Yes, sir; screwdriver and two wrecking bars, two different types of wrecking bars. The purchase was made, they paid me and then went out.

Q. What else occurred at that time, sir?

A. That—other than it was around six, closing time, other than closing, I don't remember of anything—

Q. Did you observe the vehicle that they drove off in?

A. Yes, I did, sir.

Q. Did you make any note or anything of the vehicle?

A. I was called several days prior to that about the sale—or if I stocked these sledge hammers by a competitive merchant.

Mr. Koutoulakos: Your Honor, I am going to object to any hearsay. I cannot hear him very well, but I assume he said somebody called—

Mr. Parsons: He said somebody called him several days before.

The Court: Someone called his store and asked whether he carried this particular mall in stock, but we are not so interested in that as we are in your answering Mr. Parsons' [fol. 344] question, Mr. Barwick, about the vehicle that he asked you about.

The Witness: Well, by being called, your Honor, about this particular type mall led me to be suspicious of the purchase.

Mr. Koutoulakos: Now, your Honor, I certainly think that that answer should be stricken from the record. It is not called for and his conclusion is—the jury should be told to disregard it.

The Court: We are not worried about his suspicions, unless it is developed later as to why he noted the vehicle number. Now, if you will just answer Mr. Parsons' ques-

tion, Mr. Barwick, and then if they ask you why you noted the number—why you noted the number—you may say so.

Members of the jury, if you will disregard the statement as to the suspicions, and-if you will answer, Mr. Barwick, whether you did note the vehicle.

The Witness: I did note the vehicle, yes, sir.

[fol. 345] By the Court:

Q. And that is the vehicle that these three men drove off in?

A. Yes, sir.

The Court: All right, go ahead.

By Mr. Parsons:

Q. Did you make any record or anything about this car, Mr. Barwick?

A. The license number, yes, sir.

Q. What did you do about the license number?

A. I wrote it on a piece of adding machine paper.

Q. Do you have that piece of paper with you?

A. No, sir, I don't. Mr. Phillips has it.

Q. Do you recall the numbers?

A. No, sir, I don't.

Q. At the time these three men were on your premises, Mr. Barwick, were any other persons present that you recall, sir?

A. One, yes, sir.

Q. Do you recall whom that was?

A. Mr. Edmonds.

Q. Mr. Barwick, I ask you to look around this courtroom anywhere you desire, sir, and ask you if you can identify any of the men that were present in your store on that day?

[fol. 346] A. Yes, I can, sir.

Q. Where would any of these people be?

A. Mr. Milanovich.

Q. That is the gentleman sitting here in the second row with the blue coat on and the blue sweater?

A. Yes, sir.

Q. All right, sir.

By the Court:

Q. The Mr. Phillips you mentioned, is that Nelson Phillips of the Federal Bureau of Investigation?

A. Yes, sir.

By Mr. Parsons:

Q. Mr. Barwick, I hand you a slip of paper, and there is certain writing on the back that is not pertinent to your question, but I ask you if that is the slip of paper upon which you recorded the automobile license?

A. Yes, sir.

Q. And what is that number, sir?

A. 218-815.

Mr. Parsons: I would like to offer this as Government's Exhibit No. 61, your Honor.

Mr. Koutoulakos: May I see it?

The Court: Let it be admitted as Government's Exhibit No. 60.

[fol. 347] By Mr. Parsons:

Q. When this was handed to Mr. Phillips, did he make some notations on it?

A. Yes, sir.

Mr. Koutoulakos: That is what I want to see.

The Court: Are there any notations by Mr. Phillips?

Mr. Koutoulakos: Yes, there are, your Honor, and I am going to object to it at this time.

The Court: Then we will arrange to only have one side of it photostated, Mr. Parsons. Let the other side remain—

Mr. Parsons: I do not believe—the back is certainly not evidence in this case. It is a notation made by Mr. Phillips and it is not pertinent. On the front I think there is a notation by Mr. Phillips showing the date when he received it, if I am not mistaken.

By the Court:

Q. May I inquire of the witness, without divulging to the jury, Mr. Barwick, do I understand that on this little

adding machine slip of paper the only figures you wrote [fol. 348] down or the only writing you wrote down were the numbers 218-815? This word, and I do not want you to read it, was not on the adding machine slip?

A. No, sir.

Mr. Koutoulakos: I am going to object to the introduction of that.

The Court: Yes, I think it should be sustained. However, I think it can be so eliminated by covering it over, either by some type of masking tape, or something of that kind, so that the number can still be left there and it can be exhibited to the jury, if there is any desire for the jury to see it. However, the witness has testified to the effect that he wrote this 218-815.

Mr. Parsons: If your Honor please, to avoid a good deal of trouble, I will not offer this in evidence inasmuch as the testimony is already in.

The Court: All right, let No. 60 be withdrawn.

By Mr. Parsons:

Q. Mr. Barwick, I wonder if you would come down and look at some of these tools and see if you can possibly identify them? Step down here. They are in various and sundry [fol. 349] places, without any particular designation. I believe that the tools—

A: Tools like I sold that afternoon.

Q. Mr. Barwick, in the hardware business do sledge hammers come with a handle as short as that, sir (indicating)?

A. No, sir.

Q. How do you mark the sledge hammers that you sell?

A. I have my cost code plus a retail.

Q. Do you put any other marking on the tool itself?

A. Rarely.

Q. Now, there are other tools, as you can see, in and about here. Now, Mr. Barwick, you cannot identify these tools positively as being the ones you sold?

A. No, sir.

By the Court:

Q. What tools did Mr. Warwick take out, and for what purpose? Are those tools that you selected, are they similar to what you sold these three men?

A. Yes, sir.

Mr. Koutoulakos: That was this, this, and what else what it? (sic)

Mr. Parsons: These objects he put here on the—

[fol. 359] The Court: I take it that instrument of torture you have in your hand, Mr. Koutoulakos, is a mallet?

Mr. Koutoulakos: It sure is, yes, sir, and this item here.

Mr. Parsons: I do not think he picked it out.

Mr. Koutoulakos: But he picked out this and these two items here?

Mr. Parsons: Yes, sir.

Mr. Koutoulakos: Now, your Honor, the cross-examination is going to take quite some time on this gentleman. I wonder if you would like to recess.

The Court: We will start taking it.

Mr. Koutoulakos: You mean start examining?

The Court: Yes.

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[fol. 363] PROCEEDINGS OUT OF THE PRESENCE OF THE JURY

Mr. Koutoulakos: Now, your Honor, could this witness be instructed not to talk to anybody until his testimony is completed, that is, with respect to the case or have anybody talk to him regarding his testimony?

The Court: Mr. Koutoulakos, I cannot be a policeman. [fol. 364] I am not going to eat with these people, and if you think that you are going to lead me into a mistrial because "I see that this particular witness" or "I have heard" or "I am advised that this particular witness is talking to somebody"—now, I cannot be a policeman.

Mr. Koutoulakos: Your Honor, I do not expect—

The Court: The witnesses have been separated, but there is no law at any time that prevents anyone from talking to anybody except your clients. Mr. Parsons has no right to talk to your clients. They are defendants in the case. Now, that is as far as I am going to go, and I want it under-

stood in the record that I am not going to nursemaid every witness.

Mr. Koutoulakos: Well, your Honor—

The Court: Now, the jury is out. You have made very insistent demands about my guarding these witnesses. I do not propose to do it. Now, I am not going to instruct them to do anything. I am not going to get in a position where you can come in and say that this witness or some [fol. 365] other witness was seen talking to somebody, and then I have to have a lot of ancillary proceedings that have nothing to do with the case and possibly get into a mistrial. You may talk to the witness, Mr. Parsons may talk to the witness, anybody can talk to the witness during the luncheon recess, as far as I am concerned. I do not care to talk to them. I want to eat lunch. Now, there is another matter that I want to take up—to which I have so ruled and to which you take an exception to.

Mr. Koutoulakos: Which one is that?

The Court: You take an exception to my not advising the witness that he cannot talk to anybody. I am not going to nursemaid anybody.

[fol. 368] Mr. Koutoulakos: Now, your Honor, I just want to explain my position on the other request, and I am not saying this—certainly, I bow to you whatever the Court says, but in every case I have ever been in the Judges have always instructed the witnesses, especially when they are on the stand, that they are not to discuss their testimony with anybody else.

The Court: Well, Mr. Koutoulakos, you have a different Judge, and I am not going to—I have been through too many of these cases and I know exactly what happens. A witness goes out of here, and he can be talking about the [fol. 369] weather, but if he opens his mouth—and it is impossible that this witness or any other witness will not talk to somebody. Of course, they are going to talk to somebody—if he opens his mouth, then I say to you, he is in a jam, because, right away, you will have somebody following him during the luncheon recess and come back in and say, "Well, he was seen talking to so and so." I tell him he can talk to anybody. He can talk to you, he can talk to Mr.

Parsons, he can talk to anybody. I do not want to talk to him. I am going to lunch.

Mr. Koutoulakos: All right, sir. Then you are not instructing him—I am talking about the case or his testimony—that's all I am interested in.

The Court: You can talk to him, you can ask him whom he talked to during the luncheon recess. I have no objection to that. That is permissible. You can cross-examine to your heart's content, but you are not going to get me in a position where I have to instruct every one of these witnesses not to open their mouth.

[fol. 395] ARTHUR R. EDMONDS, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Edmonds, I wonder if you would state your name, sir, and where you live.

A. Arthur Raleigh Edmonds; I live at 8041 Old Ocean View Road, Norfolk, Virginia.

Q. What is your occupation, sir?

A. I am in the Navy.

Q. What is your rate or rank, sir?

A. A D1.

Q. And that is first class?

A. First class, yes, sir.

Q. Mr. Edmonds, I call your attention to the evening of May 29th at approximately six o'clock on that day, and ask you if you will relate to the jury what, if anything, transpired on that evening, sir.

A. About a quarter of six on the evening of the 29th I went up to Mr. Barwick's Hardware to get some nails, a couple of pounds of nails, and I went in. I spoke to Mr. Sturgis there and told him I wanted a couple of pounds of nails. He went in the back to get the nails, and I saw Mike [fol. 396] Milanovich and I spoke to him.

Q. Now, had you known Mr. Milanovich before that time?

A. Yes, I was stationed with him.

Q. All right, sir, proceed.

A. And he was talking to Mr. Barwick—asked him if he had any bigger screwdriver than what he had in the tray there. Mr. Barwick says, "No, that's the biggest one I have," and I said, "Well, I have one you can use, Mike, at my house." He said, "I want one that I can put a wrench on and turn it." I said, "Well, that's what I've got." He says, "No," he says, "I will get one. I want to get one of my own so I will have it. I need it." I said, "All right."

Q. All right, sir. Did Mr. Milanovich say anything else during the course of that conversation?

A. No, sir.

Q. When you did see Mr. Milanovich, was he accompanied by other people at that time?

A. Yes, there were two more gentlemen in the store, but I didn't know whether they were with Mr. Milanovich or not.

Q. You did not. Did you see him leave?

A. No, sir, I didn't see him leave.

Mr. Parsons: All right, sir. Answer any questions counsel might have.

[fol. 400] Mr. Parsons: If your Honor please, I would like to call Howard Kenneth Bruce.

HOWARD KENNETH BRUCE, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Bruce, will you state your name and your present address, sir.

A. Howard Kenneth Bruce, Twin Oaks Trailer Park, Du Bois, Pennsylvania.

[fol. 401] Q. Were you formerly in the United States Navy, sir?

A. Yes, sir.

Q. And when were you discharged?

A. October 29, 1958.

Q. When did you join, when did you go into the Navy?

A. October 29, 1956.

Q. All right, sir. Now, where were you stationed in June of 1958?

A. Little Creek, Virginia.

Q. I call your attention to June 2, 1958, and ask you what, if any, duties you had on that date?

A. I was sentry on the main gate at that time. I was on the watch from two o'clock in the afternoon till ten at night.

Q. I wonder if you would tell the jury whether or not you had any instructions on that night, sir?

A. Yes, sir, I did. I was instructed to stop any and every vehicle that came through and to be especially alert for a black Oldsmobile—a 1957 Oldsmobile it was, black.

Q. All right, sir.

The Court: This was on June 2nd?

Mr. Parsons: Yes, sir.

[fol. 402] The Witness: Yes, sir.

By Mr. Parsons:

Q. And on that night did you stop any motor vehicles answering that description?

A. Yes, sir; it was in the evening, about 4:30, five o'clock, that I stopped a black Oldsmobile.

Q. I wonder if you would describe, as well as you can, the type of automobile it was?

A. It was a black Oldsmobile, and I asked the lady driving if it was a '57, and she said, no, it was a 1956.

Q. All right, sir, go ahead.

A. I remember the sticker number on it was N.A.S., CPO Sticker Number 3525. I remember that particularly because we were supposed to look for number 3526, and that resembled it so close that it stuck in my head—this 3525.

Q. Mr. Bruce, I wonder if you would describe how many people were in the car?

A. There were four people, two men and two women.

Q. Was there anything else in the car?

A. Yes, sir, there was a little dog. I think it was a Mexican Chihuahua.

Q. Was there anything else in the car?

A. There were some fishing poles.

Q. Can you identify anyone, or if you will look around and see if you can identify anyone that you saw in that car that night in the courtroom, or have you seen anybody [fol. 403] outside the courtroom that was in that car that night?

A. Well, I seen some people kind of rang a bell, but to positively identify them, I couldn't.

Q. Do you remember what the woman in the car looked like? Did she have any distinguishing features?

A. Well, sir, what I remember, she had sort of a dark mark on one of her cheeks and she was fairly heavy set, the woman that was driving. That's all I can remember.

Q. Can you give a description of the men or the other woman in the car, sir?

A. There was a woman in the back seat, which I don't remember at all, but two men—one of them was tall—the one in the back was tall and sort of thin and the one in the front was small, medium build.

Mr. Parsons: All right, sir. Answer any questions that these gentlemen might have.

Mr. Koutoulakos: Stand up, Mike.

Cross examination.

By Mr. Koutoulakos:

Q. Then you did not see this man, from your description?

A. No, sir, I couldn't be sure.

Q. Thank you. And this was June 2nd, between four and [fol. 404] five in the afternoon?

A. Yes, sir.

Q. I understand that there was some kind of a robbery on the Base which was after that; is that correct?

A. Yes, sir.

Mr. Koutoulakos: Thank you, son.

Mr. Parsons: Just one question.

Redirect examination.

By Mr. Parsons:

Q. He said afternoon. Was it in the afternoon or was it at night?

A. It was in the evening, sir.

Q. In the evening?

A. Yes, sir.

Mr. Parsons: All right.

Recross examination.

By Mr. Koutoulakos:

Q. I meant four or five o'clock. That was the time, wasn't it?

A. It was between 1600 and 1700 in the afternoon.

Q. That is Navy talk. We know what it means, but to the jury that is between four and five. 1600 is four o'clock? [fol. 405]

A. In the afternoon.

Q. And 1700 is five o'clock?

A. In the afternoon.

Q. And I said that; is that right?

A. (Witness nods head.)

The Court: Anything further of Mr. Bruce?

Mr. Parsons: Nothing further from the Government, your Honor.

The Court: May he be excused?

Mr. Koutoulakos: Yes, sir.

The Court: Thank you, Mr. Bruce.

The Court: Next witness.

Mr. Parsons: I would like to call Vondi Spratt.

VONDI SPRATT, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Spratt, would you state your name, sir, and where [fol. 406] you are stationed.

A. Vondi Spratt, U. S. Naval Amphibious Base, Little Creek, Virginia.

The Court: Mr. Spratt, would you lean forward a little bit so he can see your lips.

By Mr. Parsons:

Q. And were you stationed there in June of 1958, sir?

A. Yes, sir.

Q. I call your attention to June 2, 1958, and ask you, sir, what your duties were on that day?

A. Well, I was on the 2:30 to 10:30 watch at the main gate.

Q. Do you recall any special activities on that particular watch, sir?

A. Well, we just stopped a car.

Q. Do you remember anything about the car, sir?

A. Well, it was a '56 black Oldsmobile. That's all I remember.

Q. Did you observe anyone in the car?

A. No, sir.

Q. Who actually stopped the car, do you recall?

A. Bruce.

Mr. Parsons: Bruce. All right, sir. Answer any questions counsel might have.

[fol. 407] The Court: This witness may be excused, I take it?

Mr. Parsons: Yes.

The Court: All right, you may be excused.

The Court: Next witness.

Mr. Parsons: Mr. Cahill.

JOHN MICHEAL CAHILL, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Cahill, I wonder if you would state your name and your address, sir.

A. John Michael Cahill, 276 Merman Road, Akron, Ohio.

Q. What is your occupation now, sir?

A. Working for O'Mar Bakeries.

Q. All right, sir. Were you formerly in the United States Navy?

A. Yes, sir.

[fol. 408] Q. When were you discharged?

A. October 6, 1958.

Q. When did you go on duty with the Navy?

A. October 7, 1954.

Q. Were you formerly stationed at Little Creek, Virginia, at the Amphibious Base?

A. Yes, sir.

Q. Were you so stationed in June of this year?

A. Yes, sir.

Q. I call your attention to the evening and early morning hours of June 1st and 2nd, sir, and ask you if you recall what your duties were that night, sir?

A. I was a sentry at Gate 3. I had the mid-watch, the all night watch.

Q. Where is Gate 3, sir?

A. It's—it's the last gate down Highway 60 into the Base.

Q. I wonder if you would tell the jury if you made any observations on that evening of any unusual activity on that gate, sir?

A. Well, between 3:00 and 3:30 that morning, a '56 or '57 Oldsmobile went out the gate, and there was a man and two women in it, and Crowder, the sentry I was standing

with, he waved them out. The man showed his I.D. card and Liberty Card, and I was standing directly behind Crowder, [fol. 409] and we wondered what a man and two women were doing aboard the Base at that time, and then they went out and they went--turned left on Highway 60, which is east, and then we noticed them going back, going west, on Highway 60 again down towards the main gate, but whether they turned in the main gate or not, I don't know. Then a few minutes later, again we noticed that the car was going east on Highway 60 again. Then at four o'clock in the morning this same car that went out between 3:00 and 3:30 came back in, and it had just two women in the car, and the woman that was driving the car, she stopped on the outside lane and showed me her I.D. card and I waved her on through.

Q. Do you recall what the man in the car originally looked like, sir?

A. No, sir, I couldn't.

Q. Do you recall what the women in the car looked like?

A. No, sir, I can't.

Q. What type of a car was it, if you recall?

A. '56 or '57 black Oldsmobile.

Q. Did it have any type of decal or sticker on it?

A. It had an N. A. S. decal on it.

Mr. Parsons: All right, sir. Answer any questions counsel might have.

Mr. Koutoulakos: Just one question.

[fol. 410] Cross examination.

By Mr. Koutoulakos:

Q. I understand there were two women, you say, and one man?

A. That went out between 3:00 and 3:30 in the morning.

The Court: May Mr. Cahill be excused, gentlemen?

Mr. Parsons: Yes, sir, he may be excused.

ROBERT J. BOUVIER, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. I wonder if you would give your name and where you are presently stationed, Mr. Bouvier.

A. My name is Robert Joseph Bouvier and I am stationed at Little Creek Amphibious Base.

The Court: Can you speak a little louder, please? Robert Joseph what?

[fol. 411] The Witness: Bouvier.

The Court: Bouvier.

The Witness: And I am stationed at Little Creek Amphibious Base.

By Mr. Parsons:

Q. Were you so stationed in June of this year?

A. Yes, sir.

Q. I call your attention, sir, to the morning of June 2nd, and ask what your duties were on that morning, if you recall?

A. I had the watch on the main gate at Little Creek Amphibious Base.

Q. I wonder if you would tell the jury if you noticed any unusual activities, and if so, what time you noticed them, at that gate, sir?

A. I'd say at approximately between 3:00 and 4:00 a certain car came through the gate. There was a man in it and two women. They came in the gate and about—I'd say approximately fifteen minutes left the gate, came back up.

Q. All right, sir. Do you recall the kind of automobile it was?

A. Yes, sir, it was a '57 black Oldsmobile.

Q. Now, can you describe the people who were in the car, sir?

A. To my knowledge, all I could say, as far as the [fol. 412] description, would be that—there was an elderly

man—I'd say about forty years old or over—and he was heavy set. That's all I could tell about the people, and the women, I couldn't give a description on them.

Mr. Parsons: Could I take an exception off the record of being old at forty years old.

Mr. Koutoulakos: I want the same thing for the record.

By Mr. Parsons:

Q. Do you recall whether or not any of these individuals had any Navy identification on them?

A. Yes, the driver had a Navy I.D. card, which would be enlisted.

Mr. Parsons: All right, sir. Answer any questions counsel might have.

Mr. Koutoulakos: No questions, except be careful whom you call old.

The Court: May Mr. Bouvier be excused?

Mr. Parsons: Yes, sir, he may.

[fol. 413] LIONER O. CROWDER, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Crowder, would you state your name and where you are presently stationed, sir.

A. Well, my name is Lioner Owen Crowder, stationed at the Amphibious Base at Little Creek.

The Court: Can you raise your voice, please, Mr. Crowder.

By Mr. Parsons:

Q. And were you stationed there in June of this year, sir?

A. Yes, I was.

Q. I call your attention to the late evening hours of June

1st, the early morning hours of June 2nd, and ask you, sir, what your post of duty was?

A. My post of duty was a sentry on outgoing traffic at Gate 3.

Q. Did you notice any unusual activity during your tour of duty, and if so, what time?

A. Yes, I did—not very unusual, but—there wasn't much traffic that night, and there was a car that made a few extra trips through the gate, you might say, and on U. S. 60 [fol. 414] Highway.

Q. I wonder if you would tell the jury what you observed this car do, sir?

A. Well, I observed the car had come through the gate. It was in the early hours of the morning—I don't recall exactly what time it was—but there were two women in the car, and after certain hours aboard the Base—I think it's one o'clock—women guests are not allowed aboard the Base unless they are accompanied by a male guest, and then I think it's an officer only, and the other sentry had the incoming traffic, and I called his notice to this.

Q. Did they get on the Base?

A. They did.

Q. Did you see this car or these people again that evening?

A. Yes, I did. I saw them come back out the gate and accompanied with a male.

Q. They had a man with them?

A. Yes, sir.

Q. Did you see the car after that again?

A. I saw a car. I do not know whether it was exactly the same car or not, but it was like the car that I had passed through the gate. It was on U. S. 60 going east.

Q. Can you recognize or have you recognized anyone that was in that car since you have been here?

[fol. 415] A. No, I have not.

Mr. Parsons: All right, thank you very much. Answer any questions counsel might have.

Cross examination.

By Mr. Koutoulakos:

Q. Just a minute. Do I understand you to say that in order to get in at that time he had to be an officer, whoever the man was?

A. To come aboard, yes.

Q. To come aboard, you mean on the Base?

A. To go ashore, nobody has to be—

Q. Coming aboard, is that what they were doing?

A. Yes.

Q. And there had to be an officer with them in order to gain admittance?

A. Yes.

Q. That is a Navy officer?

A. Any officer.

Q. You mean Army or Air Corps, but it had to be an officer?

A. It had to be, but there was not—

Q. You say there had to be?

A. Yes.

[fol. 416] Mr. Koutoulakos: That is all.

The Court: I take it Mr. Crowder may be excused, gentlemen?

Mr. Parsons: Yes, sir. Mr. Anderson will be the next witness, if your Honor please.

CORNELIUS R. ANDERSON, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Anderson, I wonder if you would state your name, sir, your occupation and where you are stationed.

A. Cornelius R. Anderson, Special Agent with the Federal Bureau of Investigation.

Q. Mr. Anderson, did you participate in the investigation that culminated in the charges against Virginia and Mike Milanovich?

A. I did.

Q. I call your attention, sir, to approximately June 19th, sir, and ask what, if any, investigation you made on that day?

[fol. 417] A. On the morning of June 19th of this year at 8032 Webb Court, the home of Mike and Virginia Milanovich, we conducted a search of the premises. During the course of the search I found, in the closet, directly opposite the dining room, a lady's handbag which contained approximately thirty-one pounds of silver.

By the Court:

Q. May I inquire in advance, was the search conducted, Mr. Anderson, pursuant to a search warrant?

A. Consent to search, your Honor.

Q. Consent to search?

A. Yes, sir.

By Mr. Parsons:

Q. All right, sir, go ahead.

A. As I was saying, in the lady's handbag was found approximately thirty-one pounds of silver. Some of the silver was in wrappers bearing the National Bank of Commerce stamp.

Q. I wonder if you can locate and identify the bag that you found there, sir?

A. I can, That is the bag on the table (pointing).

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[fol. 532] DONNA GRIMMER, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mrs. Grimmer, I wonder if you would state your name and your present address, please.

[fol. 533] A. Donna Grimmer, 535 North Lima Road.

Q. The acoustics are bad in here. I wonder if you could speak just a little louder. They also want to hear you. Mrs. Grimmer, I believe your husband is Clayton Thomas Grimmer; is that correct?

A. Yes.

Q. And how long have you all been married, Mrs. Grimmer?

A. Oh, about a year and a half.

Q. And during that time was Mr. Grimmer arrested and did he plead guilty to certain criminal charges?

A. Yes.

Q. All right. Now, Mrs. Grimmer, after his arrest—and I call your attention to—the exact time, I do not know—but do you recall meeting with a man named Ben Guerrieri?

A. Yes.

Q. Do you recall the place that you all met?

A. Yes.

Q. What was the city that you met him in?

A. That I met Ben Guerrieri?

Q. Yes.

A. I met him in—

Mr. Davis: If your Honor please, we cannot hear the witness.

The Court: No. Please raise your voice, if you will. [fol. 534] Lean forward a little bit and speak just as loud as you can.

A. You say, where did I meet Ben Guerrieri?

By Mr. Parsons:

Q. Yes.

A. I met him in Youngstown.

Q. All right. Now, sometime after your husband was arrested did Mr. Guerrieri come by and pick you up at any time?

A. Yes.

Q. What was the occasion of him picking you up, Mrs. Grimmer?

A. It was supposed to be a meeting in Cleveland.

Q. A meeting of whom?

A. Milanoviches and Ben and myself.

Q. All right. Now, where did he pick you up, Mrs. Grimmer?

A. On Martin Street.

Q. Where did you proceed? That was in Youngstown?

A. In Youngstown.

Q. Where did you proceed to from there?

A. To Cleveland.

Q. Where did you go in Cleveland?

A. To Ann's house.

Q. Do you know her full name?

A. No, I don't.

[fol. 535] Q. And who was present at the house at that time, Mrs. Grimmer?

A. It was Ann, Steve, Ben—

Q. Steve Milanovich?

A. Yes.

Q. And who else?

A. Bennie.

Q. That is Bennie Guerrieri?

A. Myself.

Q. Yourself?

A. Myself and Millie.

Q. Millie?

A. Yes.

Q. Millie Gauger?

A. I believe that's her name.

Q. Was anyone else present?

A. And Barbara.

Q. And who is Barbara?

A. She is my girl friend.

Q. Are those all of the people that were present?

A. That's all the people that were present, except Ann's daughter, and she was there half the time, running in and out.

Q. If I may recap, it was you and Ben Guerrieri?

A. Right.

[fol. 536] Q. Steve Milanovich?

A. Right.

Q. "Big Ann"?

A. Yes.

Q. And Barbara, and somewhere in the house there was a girl. Are those all of the people that were there?

A. That's all that were there.

Q. All right. What transpired at that meeting?

A. It was supposed to be a meeting. I don't know what it was all about myself. It was talking about the—

Mr. Koutoulakos: Your Honor, I do not mind her testifying to the threat, but any other hearsay I object to. I think the threat should be explained, if there was one, and the jury can decide whether there was one or wasn't one, but as to any other hearsay, I am going to object.

By Mr. Parsons:

Q. What happened at ~~that~~ meeting?

The Court: Wait a minute now, Mr. Parsons. Of course, what initially prompted this testimony that would be brought in by this witness would be the referred to "statement" of Grimmer signed on November 5th, which was brought into evidence by the defendant, but would that [fol. 537] not be hearsay—

Mr. Parsons: Well—

The Court: —other than—

Mr. Parsons: If your Honor please, I was going to ask her one more question.

The Court: I know—you asked her what happened at the meeting, and that covers a multitude of sins.

Mr. Parsons: That is exactly right, but this witness is not stating on the stand what I was informed she would state.

Mr. Koutoulakos: That is exactly right.

The Court: Wait a minute, I do not care. What difference does it make? I am interested now in whether or not the evidence—I think she can testify to any alleged threat, if any, that may have been made.

Mr. Parsons: I would like to ask her one question, your Honor.

By Mr. Parsons:

Q. Was Virginia Milanovich at that meeting?

A. Yes.

Mr. Koutoulakos: Now, your Honor, he has impeached [fol. 538] his own witness. She said the only people there—I object to that.

The Court: I know she said that, and that is for the jury to determine.

By the Court:

Q. Why didn't you say Virginia Milanovich was present when Mr. Parsons asked you before?

A. I said "Lee".

Q. What is that?

A. Well, I tried to tell him.

Mr. Davis: We cannot—

By the Court:

Q. You tried to tell who was there?

A. Who exactly was there.

Q. Well, you did not mention the name Virginia Milanovich. Why didn't you?

A. She was there.

Q. I know she was there, so you say, but you did not say so before. Now, what we want is the truth.

A. I am telling the truth.

The Court: And if we do not get the truth, we will hold you here afterwards. Now, from now on, let's have all the facts, and that is all we want.

By Mr. Parsons:

Q. Did you talk with Virginia Milanovich at that meeting, Mrs. Grimmer?

[fol. 539] A. Yes.

Q. What, if anything, did she say to you concerning any activities your husband was involved in?

A. She said that if my husband testifies, that she would put a gun to my head and kill me—against Mike.

Mr. Parsons: Thank you, Mrs. Grimmer. Answer any questions any other counsel might have.

Mr. Koutoulakos: Just one or two questions. Let her compose herself.

Cross examination.

By Mr. Koutoulakos:

Q. Do you want to use a handkerchief? Get yourself composed. Nobody is going to hurt you. Here, wipe it off. Get ahold of yourself now. Just relax.

A. Okay.

Q. Now, didn't you tell your husband that the person that was going to stick—that did put a gun to your head was Steve?

A. No, Steve was there at the time. When she said that, he just kept saying, "Yes, yes." No one put a gun to my head. They said they would put a gun to my head.

Q. But you did not make the statement to your husband that it was Steve who was supposed to have done it?

[fol. 540] A. No, I told him that Steve was there and that Steve just kept saying, "Yes, yes," you know. He was drinking. Steve was drinking at the time.

Q. But you did not tell your husband, again, that it was Steve that did it?

A. No, Steve didn't put no gun to my head.

Q. Now, after this so-called meeting—I assume that you were frightened?

A. Yes.

Q. Especially of Virginia? I mean, she had threatened you and you were frightened; is that right?

A. Yes.

Q. Didn't you later, after that so-called meeting, spend some time in her house with Steve?

A. In her house after that meeting?

Q. Yes.

A. No, I was never in her house after that meeting.

Q. When was the date of that meeting?

A. I don't know the date of the meeting, but it was after Clay was going to plead guilty. I was in Norfolk, Virginia, one more time, and my mother come with me and I was in the hotel.

Q. But you deny—

A. I didn't even go to her house.

Q. You deny spending some time in their house, and [fol. 541] with Steve?

A. Before.

Q. After, with Steve? I do not mean it in a smart sense.

A. No.

Q. I mean you were there with Steve while he was there?

A. I was never with Steve.

Q. I do not mean as a date. I mean while he was present and you were present in the Milanovich home.

Mr. Parsons: What time, Mr. Koutoulakos?

Mr. Koutoulakos: This is after the meeting. I just want her to say whether she was or wasn't.

A. After the meeting?

By Mr. Koutoulakos:

Q. Yes.

A. I was in Cleveland. I never was in her house, no, after the meeting.

Q. Now, when was the next time that you saw your husband after this meeting?

A. I saw him in Atlanta.

Q. And when was that?

A. That was—I don't know the exact date.

Q. Was it in November or October, or when?

[fol. 542] A. November, October, somewhere around there—way over a month.

Q. Way over a month ago?

A. Yes, it's been way over a month.

Q. Pardon?

A. It's been way over a month.

Q. But, in any event, you never saw Mike there?

A. Mike? Where, up at Cleveland?

Q. Yes.

A. Mike was not there.

Q. After your husband pleaded guilty, do you have any idea when that was, what date that was? Was that in June, or if you know?

A. No, I have no idea what day it was.

Q. When you arrived here the first time, as I understand it, you came here to see your husband because he was in trouble; is that correct?

A. Yes.

Q. And how long did you stay in the Norfolk area?

A. I don't know. It was about four days, something like that. I don't know.

Q. Four days?

A. Something like that.

Q. Well, wasn't your husband—

A. We stayed at the hotel and then I went over to her [fol. 543] house.

Q. Whose house?

A. Milanoviches' house.

Q. Now, how long did your husband stay in this area, if you know, before he was sent to prison, wherever that was?

A. It was from then—when he was picked up until—I think it was either the end of July or August, something like that.

Q. And did you remain here for that whole period?

A. No, I didn't. I kept coming back and forth.

Q. So you were coming back and forth?

A. Yes, I was coming back and forth.

Q. During your trips back and forth, after your husband had pleaded guilty, were you accompanied by Steve?

A. Was I accompanied by Steve?

Q. I mean, would he fly in the same plane with you to Cleveland and did he come back in the same plane?

A. He went back on the same plane with me to Cleveland when I was staying at the Milanoviches' house.

Q. But he was in the same plane with you?

A. He was in the same plane, yes.

Q. Nothing happened to you?

A. Nothing happened to me, no.

Mr. Koutoulakos: No further questions.

[fol. 544] The Court: Anything further of this witness?

Mr. Parsons: Nothing further, your Honor.

The Court: May she be excused?

Mr. Parsons: As far as the Government is concerned, your Honor, she may.

The Court: Would the defense counsel desire her presence any longer?

Mr. Koutoulakos: Your Honor, we want her here for when we put on our evidence—just have her excluded.

Mr. Parsons: All right. Mrs. Grimmer, will you step outside again.

Mr. Parsons: Mr. Smith, take the stand, please.

HUGH J. SMITH, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

The Court: Gentlemen, Mr. Smith is going to be a lengthy witness, isn't he?

[fol. 545] Mr. Parsons: Sir?

The Court: I take it Mr. Smith is going to be a lengthy witness, or is he?

Mr. Parsons: If your Honor please, I do not know whether he is going to be lengthy or not—not on the part of the Government.

The Court: All right, he will not be. We will carry through on the direct examination before we take a recess.

Direct examination.

By Mr. Parsons:

Q. Mr. Smith, will you state your name, sir, your occupation and where you reside.

A. Hugh J. Smith, Special Agent, Federal Bureau of Investigation; I reside in Norfolk, Virginia.

Q. Mr. Smith, were you charged with some of the responsibility of investigating certain charges against—or investigating the robbery at the Naval Air Station and did you also participate in the—I beg your pardon—at the Amphibious Base and participate in the investigation at the Air Station?

A. Yes, I did.

Q. After some time, did you participate in the search [fol. 546] of the Milanovich home at 8032 Webb Court?

A. Yes, I did.

Q. All right, sir. I wonder if you would tell the jury just what you found in that search, sir?

A. Well, in the bedroom, the guest bedroom, of the Milanovich home, I found a tan Towncraft suitcase, and in this suitcase was a bag of silver, silver money—some of it in National Bank of Commerce wrappers.

Mr. Parsons: Your Honor, excuse me. We are bringing the bag in. It is locked in the Clerk's safe, your Honor.

By Mr. Parsons:

Q. Go ahead.

A. And some of it in loose change and also in this suitcase was two revolvers which were loaded, and unloaded by me.

Q. I hand you a box, sir, with objects in it. I wonder if you would tell the jury what is in the box? Take them out one at a time and identify them, if you can.

A. This is a Cobra, .38 Special, Serial No. 40269, which was one of the guns, and it was unloaded by me.

Mr. Parsons: I would like to offer that, sir, as Government's Exhibit No. 65.

The Court: Let it be admitted.

Mr. Koutoulakes: That is what he found?

[fol. 547] By Mr. Koutoulakos:

Q. You put the identification yourself?

A. Yes.

Mr. Koutoulakos: Okay, no objection.

By Mr. Koutoulakos:

Q. How about this piece here?

A. Yes. These were sent up to the laboratory for test firing, and we sealed them when we got them back.

By Mr. Parsons:

Q. Identify the other gun.

A. This is a .38 caliber Detective Special, Serial No. 422509, which was also in the suitcase and loaded.

Mr. Parsons: I offer that as Government's Exhibit No.—
The Court: 66.

(The Cobra, .38 Special, Serial No. 40269 and the .38 Detective Special, Serial No. 422509 were marked and received in evidence as Government's Exhibit Nos. 65 and 66, respectively.)

The Court: Mr. Smith, are those revolvers unloaded now?

The Witness: Yes, they are.

The Court: You have checked them. Just like to know, [fol. 548] that is all.

By Mr. Parsons:

Q. Mr. Smith, did you take supervision over all of the money that was collected at the Milanovich home at that time?

A. After it was brought to the office, I directed—

Q. Go ahead.

A. I directed an agent—two agents to make a count of this money, and I also assisted in the count of the money that was in that Towncraft bag.

Q. I wonder if you would step down, sir, and tell, if you can, where this bag was located, and you might, sir, if you want to exhibit—I believe this bag is locked.

A. This money is not as it was found. We took it from the paper bag that it was in in the suitcase.

The Court: Speak to the jury, if you will.

A. We took it out of the paper bag that it was in in the suitcase and put it in these National Bank of Commerce bags, which we got from the National Bank of Commerce ourselves, and also the money from the beige overnight bag in here now. This is the total of the money that was found on June 19th.

Mr. Koutoulakos: Your Honor, I think the record—I think he already stated that it did not come in the bag and [fol. 549] they are not part of the evidence.

The Court: He has stated that he or some other agent of the F. B. I. secured the National Bank of Commerce bags, and they are placed in there for your convenience for holding the money.

The Witness: Yes, sir, that's right.

By Mr. Parsons:

Q. These are the bullets?

A. These are the bullets, the .38 caliber cartridges, that were taken from the two pistols that have been entered.

Q. Mr. Smith, is this the bag that you recovered, sir, and if so, where?

A. Yes, this is the suitcase that was recovered by me in the guest bedroom of 8032 Webb Court.

Mr. Parsons: All right, sir. If your Honor please, we would like to exhibit this to the jury, but we do not offer it in evidence inasmuch as the money should be kept in custody and ultimately returned to the United States Navy.

The Court: The suitcase could be introduced in evidence, and as far as the money is concerned, I think it should be removed and placed at least in some bank depository un- [fol. 550] less counsel can agree that it can be returned to the Navy at this time.

Mr. Koutoulakos: Your Honor, we are not claiming the money, so I—I don't know whose it is.

The Court: You wish to offer the suitcase in evidence? Mr. Parsons, do you wish to offer the suitcase in evidence?

Mr. Parsons: Yes, sir.

The Court: Without the money?

Mr. Parsons: Yes, sir.

The Court: All right, let the suitcase be marked as Government's Exhibit No. 67.

(The suitcase was marked and received in evidence as Government's Exhibit No. 67.)

By Mr. Parsons:

Q. The newspapers, Mr. Smith, were put in too—

A. They were also put in by us.

Q. —by you all?

A. For convenience of handling.

Q. I notice there seems to be a handkerchief in here.

A. That was in there. I believe that belongs to Mr. [fol. 551] Grimmér.

Mr. Parsons: The Marshal will kindly remove the money.

The Court: Now, the money will be turned over to the Marshal. I take it it has been counted, Mr. Smith?

Mr. Parsons: Yes, sir.

The Witness: Yes, sir.

By Mr. Parsons:

Q. Mr. Smith, I wonder if you would state what the result of the count was of the amount of money.

A. Well, the total amount of money found in both bags was \$999.80, and breaking that down into two amounts, the amount in the overnight bag and the amount in the suitcase, the amount in the suitcase was \$501.60 and the money in the lady's overnight case was \$498.20, for a total of \$999.80.

The Court: All right. The \$999.80 then, by agreement of counsel, will be turned over to the Marshal for delivery back—

Mr. Parsons: To the Navy, your Honor.

[fol. 570] HERMAN F. DRUMMOND, recalled as a witness by and on behalf of the Government, previously duly sworn, testified further as follows:

[fol. 586] Redirect examination.

By Mr. Parsons:

Q. Mr. Drummond, I wonder if you would state to the jury when you arrested Mike Milanovich?

A. Approximately 6:30 a.m. on June 19, 1958.

Q. I wonder if you would state when you interviewed him, sir?

A. I interviewed him on the same date.

Q. Was that after he was arrested?

A. After he was arrested he was interviewed at our— at the F. B. I. office in Norfolk, Virginia.

Q. What, if anything, did you tell him concerning any statements he might make, sir?

A. I told him that he did not have to make any statement; that any statement he made could be used either for or against him in a court of law; that I was not going to promise him anything or threaten him in any way, and that he had the right to have an attorney, consult an attorney, before making any statement.

Q. Did he make any contact with an attorney, to your knowledge, sir?

A. Yes, sir.

Q. Was he given access to the telephone?

A. Yes, sir.

Q. Did he make a voluntary statement?

[fol. 587] A. He did.

Q. All right, sir. This statement, was it reduced to writing?

A. Yes, sir.

Q. Did he sign it?

A. No, sir.

Q. Why did he not sign it, did he state?

A. He said he wouldn't sign it on the advice of his counsel.

Q. All right, sir. I wonder if you would now tell the jury,

sir, what the oral statements he made to you were, sir, generally speaking?

A. Yes, sir. This is dated June 19, 1958, at Norfolk, Virginia.

The Court: Do not read the written statement. Mr. Parsons asked you what the oral statements were.

Mr. Parsons: Perhaps I could—

The Court: You may refresh your memory from looking at any notes that you, yourself, may have made, but the written statement, as such, is not a signed statement and, therefore, it can only be used by you to such extent, if any, as it may refresh your memory.

[fol. 588] The Witness: All right, sir.

By Mr. Parsons:

Q. I wonder if you would just briefly state—and I believe these notes were made at the time and in Mr. Milanovich's presence?

A. Yes, sir, they were.

Q. Will you tell the jury what the general text of his conversation with you was?

A. Mike Milanovich said that about April 26, '58 that his brother Steve, who lived in Cleveland, Ohio, and Clayton Grimmer, who was also from Cleveland or Youngstown, Ohio, came to his home at 8032 Webb Court in Norfolk, Virginia, at which time that Grimmer was driving a dark colored automobile, either a 1954 Pontiac, Buick or Oldsmobile. He said that Steve stayed at his home for one or two nights and Grimmer said he was going to stay with some relatives who lived in Portsmouth, Virginia. He didn't recall loaning his car to Grimmer on this occasion. He said that he owned a 1956 black Oldsmobile which he used to go back and forth to work in his job. He said that Steve and Grimmer left his home and returned to Ohio, place not known, around Monday, April 28, 1958; and that he recalls that his sister in Cleveland, Ohio, telephonically contacted him and said that Steve was in some trouble up there.

He said about three or four days after—after this visit, [fol. 589] probably around May 2, 1958, that Clayton Grimmer again came to his house and stayed there one night, and the purpose of this visit was for him to get

money to help pay an attorney for Steve and assist in bonding him out, because he had been arrested on a robbery charge in Ohio.

At this time he said that Grimmer said that he had flown in from Ohio, traveled to Norfolk via plane, and on this trip he stayed only two or three days. He didn't recall whether it was two days or three days. He said he may have loaned him his 1956 Oldsmobile at this time to go to Portsmouth to visit his relatives, but he was not sure of that, and he said he did not know any of Grimmer's relatives.

The next time that he saw Grimmer was about the middle of May 1958, and he thinks it was probably Thursday, May 15, 1958, or Friday, May 16, 1958, at which time he went outside his home towards his carport, and Clayton Grimmer was at the carport with another man, who Grimmer introduced to him as Ben Guerrieri, and he told Milanovich at that time that this man was a relative—Guerrieri was a relative of the bondsman who was attempting to get Steve out of jail in Ohio.

By the Court:

Q. Mr. Drummond, may I ask you, how do you spell that proper name you pronounced as Guerrieri? I think it may be the same as what has been referred to here by [fol. 590] counsel as Guerrieri; is that correct, gentlemen?

Mr. Koutoulakos: I could be wrong in the pronunciation, your Honor. I assume it to be Guerrieri.

A. G-U-E-R-R-I-E-R-I.

Q. Well, that is the same name that has been referred to as Guerrieri and you may be right in your pronunciation or maybe they are right; but, anyway, it is one and the same person. All right.

A. I spelled it like it sounded at the time, Judge. I didn't know how to spell it.

The Court: All right, you may continue.

A. At the meeting of Guerrieri and Grimmer at his carport at his home, he was home from lunch at the Naval Air Station for twenty or thirty minutes; that after he was introduced to Ben, he ate his lunch and then went back to

work at the Naval Air Station, and said he recalled, at that time, that he told Ben and Guerrieri—Ben and Grimmer—excuse me—that he had been unable to raise any money for bond for his brother Steve, but was still working on it. He said he did not know at this time where Ben Guerrieri or Grimmer were staying, but he believed they were staying at a motel. He knew they were not staying at his home, did not recall the name of the motel.

[fol. 591] He said he did not know how Clayton Grimmer or Ben Guerrieri traveled to Virginia on this trip, but he knows they did not have an automobile.

By Mr. Parsons:

Q. Did he state that they were both at his house at that time without an automobile or did he state they both were at the house?

A. I didn't understand you.

Q. Did he state that both were at his house at this time?

A. Yes, sir.

Q. And they did not have a car?

A. Yes, sir, he did not know how they came there, but he knows they did not have a car.

Q. All right, sir. What else did he say?

A. Well, he said he knew they did not have a car at his home at that time.

Q. Yes, that is what I understood.

A. He said he recalled that Clayton Grimmer went back to Ohio, probably, Saturday, May 17, 1958. He couldn't be exact about the date, but he thought that was the date, and that he thinks that on that day he had duty at the Naval Air Station and that he does not recall seeing him on the day that he left.

Q. All right, sir. Now, right here, did Mike Milanovich, [fol. 592] at that time, tell you anything about being out of town on May 15th, 16th, 17th, 18th or 19th of May, sir?

A. No, sir.

Q. All right, sir. Did you discuss the Naval Air Station robbery with him?

A. The next thing I discussed with him, did he have any knowledge of any robbery or burglary at the Naval Air Station in Norfolk, Virginia, and he said that the only

knowledge that he had of this is what he seen in the local newspapers and he denied knowing anything about it.

Q. Mr. Drummond, was this hammer exhibited or shown to Mr. Milanovich?

A. Yes, sir.

Q. What, if anything, did he have to say concerning this hammer, sir?

A. He said he had a leadfaced hammer—leadfaced doubleheaded hammer similar to this one, which had been slightly used, and was in the bottom of a white, metal cabinet in a shed in the rear of his carport, and he said he owned this hammer for six or seven years, didn't know where he got it from, but that it was missing from his carport and that he didn't know where it was, why it was missing.

Q. Was he able to identify this as his hammer?

A. No, sir, he didn't say that was his. He had one similar to it.

[fol. 593] Q. Did you make some inquiry as to the availability of this particular type of handle in the Tidewater area, sir?

A. Yes, sir.

Q. What were the results of that?

Mr. Koutoulakos: Are you asking him about Mr. Milanovich?

Mr. Parsons: No, I am asking him if he made an investigation as to the availability of this type of hammer.

The Court: Objection sustained.

Mr. Koutoulakos: Yes, sir.

Mr. Parsons: All right.

By Mr. Parsons:

Q. Mr. Drummond, proceed, sir.

A. Milanovich said that on Sunday, June 1, 1958, he said he went to Frank Madden's home, who is a chief petty officer in the United States Navy, and that he got—and he arrived at his home about twelve o'clock noon, and that he went over there to discuss matters concerning the Little League Baseball Team, which he was connected with; that he had several mixed drinks and that about five o'clock he left Madden's home on that day and he telephoned his

wife and telling her that he planned to go by the CPO Club at the Naval Air Station. At this time he said his wife told him that Clayton Grimmer had come in from [fol. 594] Ohio. He believes she told him "by plane" and was at his house. He said he recalls asking his wife what Grimmer was there for—"in reference to Steve?" And she replied to him, "Yes." He told his wife to tell Grimmer that he would be home shortly if he wanted to talk to him. He also said that he told his wife at this time to explain to Grimmer that he had been unable to raise some money to go on Steve Milanovich's bond, and on the same day he arrived home from the CPO Club about 7:00 p.m. and that he had had right much to drink. He described it as "plenty to drink." He said he was tired and sleepy and he talked to Grimmer a few minutes about his brother Steve. He talked to Grimmer a few minutes about his brother Steve, and this time Grimmer asked him if he could borrow his 1956 Oldsmobile Sedan for the evening to go to Portsmouth to see some of his relatives.

Milanovich said that he then fell asleep on the davenport in the living room and stayed there and slept there until around four or five in the morning, the next morning. He said when he awakened the next day he noticed that his—yes, sir—

Q. Might I interrupt you? Did he say anything at all about there being a group of people or a party at his house on June 1st or the evening of June 1st?

A. No, sir.

Q. All right, sir. Then what did he say occurred?

[fol. 595] A. The next morning, when he awakened, he saw that his car had been returned and Grimmer was in bed in the guest bedroom of his home by himself. He said that he recalls that on that morning—called it a Monday morning—that he awakened with a hangover and that he, after he awakened, he got up and cleaned himself up and went to work at the Naval Air Station about 6:30 a.m. in the morning and that he drove his 1956 Oldsmobile to work. He didn't notice anything irregular about the car at the time he used it that morning.

When he arrived home that evening about 6:00 p.m., he said that Grimmer was not there and his wife told him that Grimmer had gone back to Ohio. He did not know

how he traveled back to Ohio at this time. He did recall that his wife told him that Grimmer was going to take a plane, but he said if he did, he didn't know anything about that.

At this time, either this day or the day following, he recalled that his wife complained to him that his car was dirty as if someone had been in it with greasy clothes—greasy and dirty clothes—that he recalls that his wife washed the seat covers on this car because they were so dirty.

Then about June 11, 1958, he thinks it was a Wednesday, June 11, 1958, that he went to his carport to get a large crescent wrench, which he had to use to start a watering [fol. 596] system that he has in his yard, that he noticed that this crescent wrench was missing. He said he also owned a large, heavy duty screwdriver, which is, probably—he described—about ten inches long, and that was also missing and that he also missed a pair of six-inch side cutting pliers. He said he told his wife. He mentioned this to his wife and he complained to her that these tools were missing, and he told her—he accused her of leaving the carport shed open—the reason that they were missing, somebody had gotten them. He thought maybe she may have loaned them to one of the neighbors. He said there may have been other tools missing from his toolshed, but to his knowledge, he did not know what they were.

At this time I asked him about the safe burglary at the Naval Commissary Store at the Little Creek Amphibious Base at Little Creek, Virginia, that took place on or about June 2, 1958. He said that the only knowledge he had of this was what he read in the local newspapers. He denied any knowledge of this burglary or known anything about it. He denied that he purchased any tools for himself or for anyone else at any time during the past year. He also denied that he furnished any tools to anyone for any purpose.

He also, at this time, said that he wanted to state that he had not allowed anyone to stay at his home or use any of his property with the knowledge on his part that [fol. 597] they would be used to commit a crime of any nature; that the only reason he allowed Clayton Grimmer

to stay at his home during the past few weeks or anytime or permit him to borrow his car while he was in Norfolk, Virginia, on about three occasions was because that he came to his home on April 26, 1958, with his brother Steve Milanovich, who introduced Grimmer as his friend, and he also said he allowed him to stay there because it appeared to him that Grimmer was trying to befriend his brother Steve.

He said that the next time that he saw Grimmer was about—was June 17, 1958, at which time Grimmer was at his home with a suitcase and that he did not see the contents of the suitcase.

Grimmer stayed at his home on the 17th and 18th of June. On the 17th of June he slept in the guest room, and on the 18th of June he slept on the davenport in the living room; that on June 18, 1958, he arrived home about 8:00 p.m. and no one was home; that he changed his clothes and went to a Mr. Picot's residence and stayed about one hour and then went to the CPO Club and got back home the same evening about—the next morning about 12:30 a.m., which was June 19, 1958.

He said when he arrived home, Grimmer, Millie Gauger and his wife were playing pinochle; that he played one game with them and then went to bed; that his wife, Millie, [fol. 598] and Grimmer were still up when he went to bed, but he did not know whether Millie or Millie Gauger or Grimmer went out anywhere either before or after he came home that evening. He denied having any knowledge of Grimmer's action while he was in the Norfolk area.

I asked him also about a Rego brass or copper welding kit, which I found in a coat in his bedroom—a uniform coat. He said he had found this at the O. & R. Department at the Naval Air Station when he was visiting a musician, whose name he did not know, at the O. & R. Department. The reason—this was about the latter part of March, 1958, and the reason he was visiting the musician was to see him about playing at the Oceana Naval Air Station Chief's Club.

He said he never purchased a welding kit or used any welding apparatus.

Q. All right, sir, Mr. Drummond.

A. That's all. He read this statement at this time. He read the notes that I had written down in my handwriting and said he did not wish to sign it.

Mr. Parsons: Answer any questions that counsel might have.

[fol. 727] BENJAMIN T. GUERRIERI, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Mr. Parsons: Will the Court indulge us just a minute, your Honor.

Direct examination.

By Mr. Parsons:

Q. Mr. Guerrieri, I wonder if you would state your name, sir. Is that the proper pronunciation?

A. Yes, sir, Benjamin Guerrieri, sir.

Q. I wonder if you would state your name.

A. My name is Benjamin Guerrieri.

Q. And where is your home, sir?

A. My home is in Youngstown, Ohio.

Q. I believe, sir, you were charged in this particular action and have entered a plea of guilty and have been sentenced to jail; is that correct?

A. That's correct, sir.

Q. I would like to call your attention, sir, to about the middle of April, sir, and ask you if you came to Norfolk, Virginia, about that time?

A. Yes, I did, sir.

Q. How did you arrive here, sir?

A. Well, I came down by automobile.

[fol. 728] Q. Do you recall whose automobile it was?

A. I believe it was Grimmer's automobile.

Q. Where did you stay when you came down during the middle of April, sir?

A. At the home of the Milanoviches.

Q. Did any special events take place while you were there on that occasion, if you recall, sir?

A. Any special event?

Q. Yes.

A. Is that pertaining to the robbery, sir?

Q. No, sir. Somebody have a birthday or a party, or something like that?

A. Oh, yes, sir. It was Steve's birthday.

Q. About how long did you stay in Norfolk at that time?

A. I believe we stood there a little over a week at that time.

Q. Was there any discussion had about breaking or robbing any places during that time?

Mr. Koutoulakos: Now, your Honor, this is a key witness and so will the other confessed—

Mr. Parsons: I will rephrase it.

Mr. Koutoulakos: I am going to object to any more leading [fol. 729] ing questions and I think they should be properly rephrased.

The Court: Mr. Koutoulakos, I expect you to object to any leading questions, but until the question is asked, I cannot rule on whether it is leading.

Mr. Koutoulakos: I do not want the jury to get the impression I am hiding anything.

The Court: You have a right to object to anything. Of course, I cannot control what questions come out of any counsel's mouth.

By Mr. Parsons:

Q. Mr. Guerrieri, will you state any discussions you may have had with Mike or Virginia Milanovich regarding any activities during that week you were there if you recall, sir?

A. Well, we had talked about the party, various things in general and during the—our gathering at that time the subject about the Amphibious Base. I may have that confused. It's the first one or the second one, but it's the one that Mr. Milanovich is stationed at. We had talked about—or made arrangements to breaking into the Post Exchange.

Q. Now, thereafter, did you return to your home, I believe, [fol. 730] lieve, in Youngstown or that area, sir?

A. Yes, I did, sir.

Q. When did you next come to Norfolk?

A. Well, it was delayed until the first of the month. We had made a special arrangement to break into the place the eve of the first of the month, because that's when payday was supposed to be.

Q. What happened on that occasion, if you recall, sir?

A. Well, we went back home. We stood home for awhile.

Q. Yes, sir. I call your attention to May 16th or 17th, sir, and ask you what occurred on those dates?

Mr. Koutoulakos: Your Honor, I am going to object to any leading questions.

The Court: That is not leading.

Mr. Parsons: Your Honor, I have been practicing law a long time—

Mr. Koutoulakos: Well, he has given a date. He can ask him when in May.

The Court: He said, "I call your attention to May 16th or 17th, and ask you what happened on that date?"

Mr. Koutoulakos: He is calling his attention to the date [fol. 731] he is interested in. Maybe the witness has no recollection of that date.

Mr. Parsons: All right, sir.

The Court: Well, he cannot start, Mr. Koutoulakos, with the date of birth of this man.

Mr. Koutoulakos: I am not interested in his birth, your Honor, or his deceased. I am interested only in his own recollection.

The Court: The objection is overruled. The question is not leading.

Mr. Koutoulakos: Take an exception.

By Mr. Parsons:

Q. When did you return to Norfolk and how did you get here?

A. Well, the next time we came down, we came down in my car.

Q. Now, was this the second time you came back to Norfolk?

A. It was the second time, sir.

Q. Do you recall the approximate date at that time?

A. Sir, I am a little hazy about the dates.

Q. All right, sir. What occurred on that occasion?

A. Well, we brought some equipment down with us.

Q. What kind of equipment did you bring, Mr. Guerrieri?
[fol. 732] A. Some acetylene tanks, some tools, acetylene torch, some tips and various tools that we had used in this particular robbery.

Q. What transpired, then, sir? What happened after that?

A. Well, we came back to Norfolk. We stopped over the Milanovichs. We stood over the Milanovichs and we stored our tools.

Q. What do you mean, "We stood over the Milanovichs"? Did you stay there overnight?

A. We stayed there. I think we stood there—we stood there a few days—

Q. All right, sir.

A. —before the robbery.

Q. Then what happened, sir?

A. Well, nothing in particular. We stood there. We put the tools in his shed and we more or less just waited around for the eve of the first of the month.

Q. Now, I call your attention to about the middle of May, sir, and ask you what your activities around the middle of May were, sir, do you recall?

A. Well, what tools we didn't have, we made various rounds of hardware stores and places in purchasing some of the equipment that we didn't have.

[fol. 733] Q. And what, if anything, did you do with this equipment, sir?

A. Well, after we bought this equipment, we stored it in Mr. Milanovich's shed—

Q. Was he aware of the purchase and storing of these tools?

Mr. Koutoulakos: Now, your Honor, that is exactly the point I am making. Those are elements that have to be concluded by the jury after the facts are brought out. I do not think he ought to lead his witness and I object to it.

The Court: I think the question is a trifle leading. You can ask him if Mr. Milanovich was there at any time, but not as to what he was aware of as such.

Mr. Parsons: All right, sir.

By Mr. Parsons:

Q. Was Mr. Milanovich present at any of the times that you bought tools, sir?

A. Oh, yes, sir.

Q. Was he present at any of the times the tools were stored in his tool shed?

A. Yes, sir.

Q. Now, with reference to the Naval Air Station Exchange [fol. 734] change, how did you get to that Exchange? Do you recall the date?

A. Yes, sir.

Q. First, do you recall the date that that occurrence took place?

A. No, I don't recall the date of the robbery, sir.

Q. How did you get to that Exchange?

A. Well, the night of the robbery, Grimmer, myself, Mr. Milanovich and Virginia Milanovich—

Q. Is Virginia Milanovich and Mike Milanovich in the courtroom now?

A. Yes, sir.

Q. How did you get—

A. They drove us to this Base.

Q. Had you ever been on that Base before?

A. Yes, sir, I have one time before with Virginia Milanovich and Mike Milanovich.

Q. What did you do on the previous visit to the Base, if anything?

A. Well, they pointed out to me the safe that was in the Post Exchange, and by looking at that safe, I would know what kind of tools we would need.

Q. Did Mike and Virginia Milanovich remain in the car after you arrived on the Air Station?

A. The night of the robbery, sir?

[fol. 735] Q. Yes, sir, the night of the robbery.

A. Yes, sir, the night of the robbery we drove alongside of the Post Exchange. Grimmer and I got out and we arranged, between us, a designated spot where we would meet.

Q. What did Mike and Virginia state that they were going to do, if anything?

A. They would be parked by the Officer's Club and pretend as they were lovers.

Q. What did you and Grimmer do after that?

A. Well, after they dropped Grimmer and I off, Grimmer and I proceeded to break into this Commissary Store.

Q. To the Commissary Store or the Post Exchange?

A. I'm sorry, the Post Exchange, sir.

Q. Now, about what time did you go from the Milanovich home to the scene, or about what time do you think it occurred?

A. I can't tell you exactly the exact time, but I would say it was roughly around 10:30 on up, somewhere around there.

Q. All right, sir.

A. The Post Exchange closes at eleven o'clock, and the idea of that was, we were supposed to have been through by one o'clock because they couldn't park there much longer after that.

Q. What time did you actually get into the Exchange [fol. 736] Building, if you recall?

A. Roughly about eleven o'clock, sir.

Q. By what means did you get into the building?

A. We climbed a fire escape onto the roof. There was a window open which, I believe, was the boiler room, maintenance room. We went into the maintenance room, down the hall, into the theatre, down the steps. We came to a corridor, and right across from this corridor was a door that led into this Post Exchange.

Q. After you go into the Post Exchange, sir—how did you actually get in the Post Exchange from the corridor?

A. Well, sir, the Post Exchange part, there was a little window in the corner by the door, which we removed that window plate and crawled in through it and, as a matter of fact, the safe was right in view there.

Q. What did you do at the safe, then, Mr. Guerrieri?

A. Well, then we proceeded to open the safe, sir.

Q. Now, did you take, sir, anything other than the stuff you found in the safe?

A. Yes, sir, we took some luggage and some diamond rings.

Q. Do you remember approximately how many diamond rings were taken, sir?

A. I'd say roughly anywhere between ten to fourteen [fol. 737] rings.

Q. All right, sir.

A. Ten to fourteen rings.

Q. Did you keep some of these rings and give them, later, to Mr. Peterson?

A. I gave Mr. Peterson one set, sir.

Q. Who was actually with you at this time when you broke into the safe, sir?

A. Just Clayton Grimmer and myself, sir.

Q. About what time did you leave the building, sir?

A. Well, sir, it took a little longer than we anticipated, so I'd say roughly about 1:30.

Q. And who picked you and Grimmer up?

A. Well, Mr. Milanovich and Virginia were still parked down in back of this Officer's Club. There were still a few cars left there. We carried the money down—no, excuse me, I take that back. We put all the silver in a satchel first, in a suitcase. We couldn't carry it. It was too heavy. So we took the other currency in another suitcase and we brought that down first and we hid it under a truck in that vicinity. Then we went down to where Virginia and Mike were parked and we told them that it was over with. So, we got into the car with them and we drove in back of the Post Exchange, where we had the money hid, and out of the car, opened the trunk and put the money in the trunk. [fol. 738] Then we drove off.

Q. Did you go through one of the gates of the Air Station to get off the Base?

A. Yes, sir.

Q. Where did you go after you were picked up and went out the main gate, out the gate, whichever gate it might have been?

A. Well, right after we went out the main gate, we went right to the Milanoviches' home.

Q. All right, sir. And what happened at the home after you arrived there, sir?

A. Well, when we arrived at the home there, we brought the money into the bedroom. Then we had told them about

the money we had left back at the Post Exchange, and Virginia decided it was a good idea to go back for the money.

Q. Is this the Post Exchange now or the Commissary?

A. Yes, sir, same place. We went back there twice that night, sir.

Q. How much money did you get as your share, if any, from the Post Exchange robbery?

A. My share, sir, was roughly between thirty-two hundred and thirty-four hundred.

Q. Who else shared in the proceeds of that robbery?

A. Grimmer got the same amount as I have, Virginia got the same amount and Mr. Milanovich got the same amount.

[fol. 739] Q. Was there anyone else present?

A. Yes, we had some extra change left.

Q. What happened to it?

A. Which we gave to Mildred at that time.

Q. All right, sir.

By the Court:

Q. Who is Mildred?

A. Millie.

The Court: Millie?

Mr. Parsons: Millie.

The Witness: Yes.

By the Court:

Q. You do not know her last name?

A. No, I don't, sir.

By Mr. Parsons:

Q. Who were the people that planned this robbery, Mr. Guerrieri, if you know, sir?

A. Virginia Milanovich.

Q. Mr. Guerrieri, I call your attention to around the first of June or the last part of May, sir, and ask you, did you participate in the theft at the Little Creek Amphibious Base?

A. I did, sir.

Q. Had you ever been in this Commissary prior to the time that this theft occurred?

[fol. 740] A. I have, sir.

Q. Who took you in there, sir?

A. Mr. Milanovich, sir.

Q. And what transpired while you were in there at that time?

A. Well, at the time I was at that Commissary, I had to take a look at that safe. There was a telephone hanging on the wall. It was by a door, and by talking on that telephone I could see in that room where the safe was, sir.

Q. What did Mr. Milanovich say about the safe, if anything?

A. Well, he said he don't know exactly what kind of a safe it was, and it would be a good idea to take a look at it first to see what kind of equipment we would need.

Q. On the day or the night that you committed this theft, how did you get to the Little Creek Amphibious Base?

A. With the same procedure, sir.

Q. I wonder if you recall approximately what time you arrived there?

A. Well, I'd say this night, sir, was about twelve o'clock.

Q. Incidentally, sir—I did not ask you—but do you recall the kind of car that you were driven to the Exchange—into the Amphibious Base in?

A. Mr. Milanovich's Oldsmobile, sir.

[fol. 741] Q. Do you recall what year model it was?

A. I believe it was a '55 or a '56.

Q. Now, sir, this particular robbery, sir, who went with you at this time?

A. Well, on this particular robbery, sir, there was three of us involved.

Q. All right, sir.

A. Five of us altogether, sir.

Q. All right, sir.

A. It was myself, Grimmer, my brother-in-law, Virginia and Mr. Milanovich, sir.

Q. After you got on the Base, what did you do then, sir?

A. Well, let me see. We more or less used the same procedure on that Base as we did on the last one. They

dropped us off on the side of the Commissary and they were supposed to go down and park at the Officer's Quarters. There were cars parked there where the officers had lived and they were supposed to go into the same routine as they had previous.

Q. Did you actually get into the Commissary Store that night, sir?

A. Yes, sir.

Q. How did you get into the Commissary Store?

A. Well, sir, we made our way to the roof and we removed the window, a small window frame, out of one of [fol. 742] them big French windows and we went through that window.

Q. How did you get into the building from that window, sir, if you recall?

A. We dropped down from the window into the Commissary Store, sir.

Q. Did you have any tools with you at that time?

A. Yes, sir.

Q. And what action did you take after you got into the Commissary Store, if you recall?

A. Well, sir, there was two safes in there. One safe I didn't see when I looked in there the first time. It was in the other room. And at first we attempted to burn open the big round door safe. The torch stopped working. So, therefore, we started on the other safe, which you didn't need no acetylene torch. So we opened that safe and removed the contents that was in that safe, sir.

Q. Approximately what time did you get through with that particular job, sir?

A. Well, sir, I couldn't tell you exactly what time, but this much I do know, it was morning, getting close to morning, because Mike had came to the telephone booth that was on the side of the Commissary Store and had rapped and says to hurry up because it was almost daylight.

Q. Now, did you have a prearranged meeting place in case they were not present when you came out, sir?

[fol. 743] A. Yes, sir.

Q. What happened when you came out?

A. Well, sir, first we took the money out. That was the silver and the currency, and we brought it to this designated

place where the Milanoviches were supposed to pick us up. However, the Milanoviches didn't come, so we buried the money in the woods close by. We were going back to the Post Exchange for the tools when we seen the jeep parked in front of it. We seen—

Q. Going back to the Post Exchange or the Commissary?

A. The Commissary Store, sir, I'm sorry. When we seen the Authorities more or less around the Commissary, we decided that there was no use going back. So, therefore, we left at that time. We didn't find the Milanoviches. We left the money on the Post concealed.

Q. How did you conceal it, Mr. Guerrieri?

A. We hid it in the woods—

Q. Buried?

A. —where there was some brush and we camouflaged it. We put leaves over it and branches, and so forth, things like that.

Q. All right, sir.

A. Then we proceeded down by the riverbank and we came out at the far end of the Base.

[fol. 744] By the Court:

Q. The riverbank?

A. Yes, sir. There was a hole under the fence where I imagine the sailors used to sneak out, so we just came right under that hole.

By Mr. Parsons:

Q. You do not know whether that was a river or an inlet from the sea, do you?

A. No, I wouldn't say it was a river or sea, or what, sir. All I know is, there was a lot of water, sir.

Q. After you got out from under the fence, what happened then?

A. Well, we had a designated place in case—just in the event there would be any trouble on the Base and they couldn't get to us, in case we had to run, sir, we would meet at a designated place, which was close by the Base. So we proceeded to this spot and we waited and we waited there

for a good length of time. I forget exactly just how long it was, but eventually Virginia came up the road. Mike was no longer with her, and Grimmer got out and flagged her down. Then she came and stopped the car and we all got into the car, sir, and we left.

Q. Do you recall whether Virginia Milanovich was alone at that time or not?

A. No, sir, she had brought Millie. Millie happened to [fol. 745] be staying at her house at that time. She brought Millie with her, because she didn't want to stay there by herself. Mike was a little too upset, sir.

Q. Where did you go from the time you were picked up by Virginia Milanovich?

A. We went right to the Milanoviches' home.

Q. What occurred at the Milanovich home?

A. Well, we told them what had happened, that the money was still on the Post; and so forth, and we had made arrangements to go back to the Post and pick up the money. Now, that night, I believe—now, I believe—I'm not sure whether it was Christ, my brother-in-law, that went back with her or Grimmer, but one of the two went with Virginia Milanovich back to this Base and they came back and says that there were too many people around there at that time. So we waited a while longer, and I think it was around that afternoon, somewhere around that afternoon—I'm not sure of the time now—myself, Grimmer, my brother-in-law, Virginia Milanovich and Mike Milanovich, we got into the car and we went back to the Base, sir.

Q. Let me ask you this: What was in the car besides people that day, if anything?

A. We had some fishing rods, fishing tackle. The story was that in case we got stopped, we were going to go fishing. We went into the Gate, down around to where the [fol. 746] money was buried. We seen that there was still too much activity, so we decided just to leave it there temporary. So we proceeded on out the Gate again. As we got to the Gate, this guard stopped the car and said, "I believe this is the car that I seen last night." That shook us all up a little bit, but there was somebody inside and said, "No, it was a late model." So, evidently, it must have been his

superior, which I believe it was now. So they didn't question the point any further and they waved us on through, sir.

Q. Did you receive any of the money from that job on that day, sir?

A. Sir, I didn't receive no money that day or any other time, sir.

Q. What did you do after the second trip back to the Amphibious Base?

A. Well, sir, we went back to the Milanoviches and we waited around there all that same day, and then we had talked about what we were going to do about that money. Seeing that the way things were going at that time—what I mean by that, it wasn't going in our favor—we made plans to leave the money there temporarily, and we'd go back and get it in about a week or two.

Q. And what did you do after that discussion?

A. Well, after that discussion—one minute, sir, I'm not so sure about this point here. I forget how it was but, never-[fol. 747] theless, they were a little scared that night for some reason or other, and they asked Millie if she would be good enough to put us up at her home. Millie didn't want to but, nevertheless, they talked her into just keeping us there overnight, because we had made arrangements to fly back to Youngstown the next morning.

Q. And did you return to Youngstown the next morning?

A. Yes, sir.

Q. All right, sir. When did you next come to Norfolk, sir?

A. Well, sir, I never came back to Norfolk after that.

Q. I believe you came back to Newport News?

A. I came back to Newport News several months later, sir.

Q. Now, I call your attention, sir, to the latter part of June and the place is Youngstown, Ohio, sir, and ask you if you recall meeting with Donna Grimmer at that time or around that time?

A. I seen Donna Grimmer quite frequently at that time, sir. As a matter of fact, it was about a week after this episode I picked up a paper one morning and I seen where Grimmer—

Mr. Koutoulakos: Your Honor, I think he is exceeding [fol. 748] the question. I thought he asked him to recall the meeting. Now he is talking about reading something in a newspaper.

The Court: Just answer, if you will; Mr. Guerrieri. Did you see Donna Grimmer the latter part of June; is that correct?

Mr. Parsons: Yes, sir.

The Court: Anytime during—

A. Yes, sir.

By Mr. Parsons:

Q. Did you go with her anywhere at that time?

A. Yes, sir, I did, sir.

Q. Where did you go?

A. Well, on one occasion I went to Cleveland with her, sir.

Q. And where did you go in Cleveland, if you recall, sir?

A. We went to the home of Mr. Milanovich's brother, sir—or sister, rather.

Q. What was her name, if you recall, sir?

A. All I know, sir, is they call her "Big Ann."

Q. What occurred at that meeting, if you recall?

A. Well, sir, they was a little radical.

Q. Let me ask you this, sir: Who was present at that [fol. 749] meeting?

A. Well, first, sir, there was myself, Donna—that's Grimmer's wife—a girl named Barbara, "Big Ann", Steve Milanovich, Virginia Milanovich, Mildred and "Big Ann's" daughter, sir. She is a young child. She wasn't—

Q. All right. What did Virginia and Mike Milanovich say at this meeting, if you recall, sir, if anything?

A. Well, sir, they were implying that Donna had phoned the F. B. I. and it was through that process that their home was raided that morning. She said that after her and Clay went back to the Post to retrieve the money, six o'clock that morning the Federal people raided the house and confiscated whatever there was there. Now, they couldn't understand how—at least, this is what Virginia is telling me—how or why the F. B. I. raided that house

at that time of morning. So they came to the conclusion, among themselves, that it had to be Donna who called the F. B. I., in the first place. At that morning—at that night, when they went to get the money, two o'clock that morning, she held a conversation with Clayton Grimmer on the 'phone and they were fighting on the 'phone and they believed, due to the fact that they were fighting, that Donna had called the F. B. I., sir.

Q. All right, sir.

A. Now, their object was to question Donna about that [fol. 750] to find out if it was true or not.

Mr. Koutoulakos: Your Honor, I do not know what question he is answering now. I think he ought to wait for the District Attorney to ask him a question.

The Witness: I am sorry, sir.

By Mr. Parsons:

Q. It was still the same question. I asked you what Mike and Virginia Milanovich said at that meeting, and I assume that is what you were testifying to, and I would like you to continue to state what they had to say at the meeting.

A. Yes, sir. Well, they implied and made accusations to the effect that Donna was the one responsible for this whole thing backfiring and—well, it's a little hard to say, sir, because everybody was talking at one time there that night.

Q. Did they make any request of you at that time?

A. Did they make any request of me at that time? Yes. In view of what had happened, they wanted to get off the limb. In view of the fact that Grimmer had already been apprehended and confessed, so they said, now that I was implicated, which, I believe, at that time I was implicated—yes, I was implicated. As a matter of fact, I was out on bond—that if we could cook up some story between us to get her and Mr. Milanovich off the hook. The idea was for [fol. 751] Clay and I to assume all the responsibility of what happened, and so forth, and they would compensate us in some various ways.

Q. Was Sofocleous at that meeting, sir?

A. No, sir, he was not.

Q. When you returned or when you flew on the plane to and from Norfolk, what name did you use, sir?

A. I used the name of Mr. Sherbundy, sir.

Q. Do you recall, of your own knowledge, the names Mr. Grimmer and Mr. Sofocleous used?

A. Yes, sir.

Q. What were the names of these—

A. Mr. Grimmer used the name of Mr. Harrell, sir, and Sofocleous used the name of Mr. Christopher.

Mr. Parsons: All right, sir. Answer any questions that counsel might have, if you will.

Mr. Koutoulakos: Your Honor, this gentleman is going to take some time on the stand. We would like to have a recess so we can prepare the proper questions for him during the noon recess.

The Court: You will get it at one o'clock. It is now twenty minutes of one, or nineteen of one.

Mr. Koutoulakos: Well, we want to, at this time, then [fol. 752] request the Federal Bureau of Investigation to present us with any statements that this man made to them, whether signed or unsigned—I think we are entitled to that under the Code.

Mr. Parsons: We have them for you, Mr. Koutoulakos.

Mr. Koutoulakos: Well, I could not get them before.

Mr. Parsons: They are not proper until he has testified.

Mr. Koutoulakos: And could we have the time now to check his statements over, your Honor. We have never seen them, so we do not know what is in them and we will have to look them over.

The Court: Counsel has not seen them before?

Mr. Parsons: No, they have not.

The Court: How many statements are there?

Mr. Parsons: There are a number of them, your Honor, and they are in some detail, your Honor.

The Court: All right. Mr. Marshal, this witness may be [fol. 753] taken down for the present.

Members of the jury, counsel have the right, under the law, after a witness has testified, to review any written statement made by that witness to any investigative agency and, therefore, that will take a little time, and I would suggest that we recess at this time until two o'clock. You may

be excused. Please do not discuss the case with anyone, nor permit anyone to discuss the case with you, and if you come back here in advance of two o'clock, I would suggest that you come right into the jury box rather than remain out in the hall. There are too many witnesses out there, and I am a little bit concerned, sometime, while it would be innocent conversation, I am certain, yet, you do not realize what happens when jurors start talking to anybody and; therefore, please avoid it.

All right, you may be excused until two o'clock.

Mr. Koutoulakos: Thank you.

The Court: Nothing further, then, gentlemen. We will recess until two o'clock.

[fol. 754] (Thereupon, at 12:45 p.m., a recess was taken until 2:00 p.m.)

AFTERNOON SESSION

(The Court reconvened at 2:00 p.m.)

The Clerk: Gentlemen, you waive the jury poll? Mr. Parsons, waive the jury poll?

Mr. Parsons: Waive the jury poll.

The Court: All jurors present.

The Clerk: Fourteen people there.

BENJAMIN T. GUERRIERI, the witness on the stand at the recess, resumed the stand and testified further as follows:

Mr. Parsons: I have one other question I would like to ask him.

By Mr. Parsons:

Q. Mr. Guerrieri, after the Post-Exchange robbery, did Mike and Virginia Milanovich say anything about their destination at that time or your destination, sir?

A. Well, at first—

[fol. 755] Mr. Varoutsos: Your Honor, I object to that as being a leading question.

The Court: The question is leading. I think the only thing you could ask him along that line is where he went after the Post Exchange robbery. I assume you mean after they came home.

Mr. Parsons: Yes, sir, after they came home.

The Court: After they came to the Milanovich home, where he went or, if he knows what the Milanoviches did, or either one of them.

Mr. Parsons: All right, sir, I will rephrase the question.

By Mr. Parsons:

Q. Where did you go after the robbery and after the return to the Milanovich home, sir?

A. Well, sir, after we had all left together in two separate cars, we split up in Richmond—Richmond, Virginia. We were all going to go to Baltimore, at first, but after we got to Richmond, we changed our plans. Mr. Grimmer and I, we came back toward Youngstown and, as far as I know, they proceeded toward Baltimore.

Q. Did you ever have any occasion to ask them where [fol. 756] they went again after that?

A. Yes, yes, yes. They went to Baltimore, sir.

Q. Did they tell you that?

A. They told me that, sir.

Mr. Parsons: All right, sir. Thank you, sir.

The Court: All right, Mr. Varoutsos.

Mr. Varoutsos: Your Honor, if I may, I tried to eat a little bit of a lunch and I have had around eleven or twelve statements to go through. I cannot digest them so quickly, so from time to time I will have to have some interruptions to talk to counsel and go through my notes.

The Court: All right, sir. We will endeavor to cooperate in view of the large number of statements that you apparently had to review.

Mr. Varoutsos: Thank you, your Honor.

Cross examination.

By Mr. Varoutsos:

Q. Mr. Guerrieri, how old are you?

A. I am thirty-five years old, sir.

Q. And have you ever been convicted of a felony prior [fol. 757] to your two convictions relating to the Naval Air Station and the Little Creek Amphibious robbery?

A. Yes, sir, I have.

Q. Now, once or more than once?

A. One felony, sir.

Q. One felony? And where was that?

A. That was in Warren, Ohio, sir.

Q. Warren, Ohio. And did you get any time out of that?

A. Yes, sir.

Q. How much?

A. Three years, sir.

Q. And what was that charge?

A. It was a robbery, sir.

Q. Armed robbery?

A. No, sir.

Q. And is that the only conviction—and where did you go when you were convicted in Warren, Ohio?

A. Mansfield State Reformatory.

Q. And is that the only felony you have been convicted of?

A. Well, when I was thirteen years old, sir, that was no felony.

Q. Since you brought that up, tell us about that too.

[fol. 758] Mr. Parsons: If your Honor please, I do not think that is within the scope of cross-examination. He has a perfect right to ask him if he has been convicted of a felony—that is perfectly proper—but the details of that felony are not admissible in evidence.

The Court: For what purpose, Mr. Varoutsos, do you go beyond the scope of asking if he has been convicted of a felony?

Mr. Varoutsos: Well, I asked him and he said there was another time when he was thirteen, and I thought he was go-

ing to say a felony. Then he starts to bring it out, and I just told him to continue. He was the one that stated—

The Witness: Well, that was for truancy anyhow, sir.

By Mr. Varoutsos:

Q. What was that?

A. It was for truancy.

Q. Truancy. Now, were you in the Service?

A. Yes, sir.

Q. What type of discharge did you receive?

A. Undesirable, sir.

[fol. 759] Q. Now, you say that is the only felony, the one in Warren, Ohio, where you got three years and you have not been convicted of any other felony?

A. No, sir.

Q. Now, I have here—

Mr. Varoutsos: Your Honor, I have spoken with Mr. Parsons. I would like to ask the question.

By Mr. Varoutsos:

Q. You were also convicted of Article of War 69, in which you received one year and six months. Is that a felony?

A. I don't think so, sir.

Q. And you received more than a year.

A. All I know, it was for fighting and insubordination, sir.

Q. And is that record correct, one year and six months?

A. Yes, sir.

Q. You spent that time where?

A. Well, I spent it in various hospitals. I was also wounded in Service, sir.

Q. And did you spend any time in Leavenworth? Was that—you said hospitals?

A. Well, I was sent to a hospital at Fort Leavenworth for an operation, sir. The last six months, from Camp [fol. 760] Gordon.

Q. Now, Mr. Guerrieri, directing your attention to the day that you were outside of the Grand Jury room, do you recall that day, in Norfolk?

Mr. Parsons: For the purpose of the record, I think the Grand Jury was held in Newport News.

By Mr. Varoutsos:

Q. Or in Newport News?

A. I will try and remember, sir.

Q. Do you recall being there?

A. I remember being at Newport News, yes, sir.

Q. And do you know Richard Donnauro?

A. Richard Donnauro?

Q. Millie's son.

A. Oh, yes, I know Richard.

Q. And without going into the discussion that you had with that young boy—how old is he, do you know?

A. Well, I don't know exactly. I'd say he was about fifteen, sixteen years old.

Q. And do you remember having any discussions with him?

A. I have talked to the boy, yes.

Q. And did you tell him what to say in the Grand Jury room?

A. Nothing except tell the truth.

[fol. 761]. Q. Is that all? That is exactly what I am driving at.

A. Well, he did ask me for some advice, what should he do.

Q. No. Did you tell him what to say in the Grand Jury room other than to tell the truth?

A. Well, no, sir.

Q. You did not do that, you would not do anything like that?

A. I talked to the boy, yes.

Q. About his testimony, what he was to testify to in the Grand Jury room?

A. I told him to say exactly the truth.

Q. That is all?

A. Well, I talked to the boy, yes, sir.

Q. I am talking about his testimony that he was going to give.

A. Well, I don't know what testimony he was going to give, sir.

Q. So you did not discuss it with him?

A. I discussed a few things with him, yes.

Q. Now, in order to tell the truth, did you give him any money?

A. I have given that boy money a few times, sir.

Q. No, I am not asking you a few times, I am asking [fol. 762] you right before you went into the Grand Jury room, did you offer him money and give him money?

A. I didn't offer him any money, sir.

Q. Did you give him some money?

A. I gave him some money, yes.

Q. How much did you give him?

A. I don't remember whether it was five or \$10.00.

Q. Was it one five or ten dollar bills?

A. I don't remember the exact amount.

Q. And was that for him to tell the truth?

A. No, sir, I beg your pardon. I gave it to the boy because the boy didn't have any money. I was always giving that boy something.

Q. All right. Now, Mr. Guerrieri, when you were brought here to Newport News were you and Mr. Grimmer separated?

A. Yes, we was.

Q. And did you all try to exchange—did you try to communicate with one another?

A. You mean right now, sir?

Q. Since you have been in Newport News.

A. This time, sir?

Q. This time.

A. Yes.

Q. And you knew you were separated because the F. B. I. was trying to keep you and he apart?

[fol. 763] Mr. Parsons: If your Honor please, that is pure argument and I object to the question.

Mr. Varoutsos: No.

Mr. Parsons: I object to the question. That is not a proper question on cross-examination under any circumstances.

The Court: Objection sustained.

Mr. Varoutsos: May I ask this, your Honor, in light of your ruling—

The Court: You can ask whether they were separated, but you have nothing to do with what the F. B. I. thought, neither can these witnesses.

Mr. Varoutsos: Can I ask—it is my understanding they were separated so they would not be able to talk to each other.

Mr. Parsons: I object to that, your Honor.

The Court: Well, all prisoners are separated, Mr. Varoutsos.

Mr. Varoutsos: Well, your Honor, in this case I am trying to show they were kept separate and apart where they [fol. 764] could not communicate with others, among themselves.

The Court: You can ask him where he was in the jail.

Mr. Varoutsos: All right.

The Court: And where Grimmer was in the jail, and that is far as you can go.

Mr. Varoutsos: All right.

By Mr. Varoutsos:

Q. Mr. Guerrieri, did you have an opportunity to speak with Mr. Grimmer face to face in the jail?

A. A few times.

Q. And did you communicate with him through anyone else?

A. No, sir.

Q. Did you hand any notes—

A. No, sir.

Q. —or give any notes to anyone to give to him?

A. Well, if—you're right, I did send him a note. He sent me a note.

Q. That is right. How many would you say you sent him?

A. I'd say about two, sir.

Q. About two. And how did you get it to him?

A. Through a runner, sir.

Q. Through a runner? And who was the runner?

[fol. 765] Mr. Parsons: If your Honor please, I believe this is all immaterial. It certainly has nothing to do with the case.

The Court: It may be pertinent.

Mr. Parsons: I am going to ask that it be stricken if it is not pertinent, because there is certainly nothing to tie it in now.

The Court: We are not trying this witness for sending a message to another prisoner, but it may have some relevancy to the case.

By Mr. Varoutsos:

Q. Now, do you know whom the runner was?

A. No, I don't, sir.

Q. And was that in reference to this case?

A. Well, it was more or less a personal problem.

Q. A personal problem. And I ask you my question again, which I think you can answer yes or no—

Mr. Parsons: If your Honor please, I again renew my objection. I can see no materiality to that.

The Court: It may have some materiality. I do not know. Just ask him what was on the note, Mr. Varoutsos. First [fol. 766] let me ask this question. Was it related to this case? I do not even want to go into it. Was it related to this case?

The Witness: Well, not in so many words. It was more or less of a personal nature.

By Mr. Varoutsos:

Q. You say it was related. Either it was or it wasn't.

A. Well, he asked what I was going to do.

Q. So then you say it was related to this case?

A. It was more or less of a personal nature.

Q. All right. Now, Mr. Guerrieri, did you have a meeting this morning between you and Christ Sofocleous and Grimmer? Did you three get together?

A. No, sir.

Q. Did not speak to any of those two this morning?

A. Oh, I speak to Grimmer. Grimmer and I came over together. We left yesterday together.

Q. Did you speak to Sofocleous?

A. My brother-in-law, sir?

Q. Your brother-in-law.

A. Yes, I did.

Q. Then you had an opportunity to talk to both of them before you testified this morning?

[fol. 767] A. Before I testified this morning?

Q. Yes.

A. I didn't see my brother-in-law, Christ, this morning, sir.

Q. When did you see him?

A. Just this afternoon, sir—wait a minute, excuse me, I take that back. Yes, I did see him.

Q. And did you discuss with him this case?

A. Well, he asked me how I felt, and so forth.

Q. No. Now, my question is not about your health. My question to you is, did you discuss this case?

A. No, sir.

Q. All right. Why were you hedging?

A. Well, I'm trying to answer your question the best I can, sir.

Q. All right. Now, Mr. Guerrieri, how many other times have you spoken to Grimmer and to Sofocleous since you have been down here to Newport News?

A. Well, sir, I have only been over here twice.

Q. And you have only spoken to Christ twice?

A. Yes.

Q. Now, did you have a talk with, first, Grimmer in the presence of any agent of the F. B. I.?

A. No, sir.

Q. How about Christ Sofocleous?

[fol. 768] A. My conversation with Christ, there was an F. B. I. agent sitting present.

Q. Now, how many times, since you have been in Newport News, have you had interviews with the F. B. I. about your testimony in-court?

A. I haven't, sir.

Q. You have not spoken with any F. B. I. agent about your testimony in court? Now, think hard.

A. Yes, sir.

Q. How many?

A. One time, sir.

Q. One time. With whom?

A. Mr. Peterson.

Q. Was anyone else present?

A. And Mr. Anderson.

Q. And was that in reference to your testimony here in court?

A. No, sir.

Q. Then since you have been here in Newport News you did not speak to any agents about your testimony?

A. No, sir.

Q. Now, you were present at both the Naval Air Station robbery and the Amphibious Little Creek robbery; is that correct?

A. That's correct, sir.

[fol. 769] Q. Which one came first?

A. The one that Mr. Milanovich is stationed on, sir.

Q. The Naval Air Station?

A. I imagine that's what it is, sir, Naval Air Station.

Q. Did you have all of your tools with you when you came down for that job?

A. I brought some tools down with me, yes. I don't know whether it was the first time or the second time, I'm not sure.

Q. Haven't you testified to that this morning, or did I misunderstand you?

A. I brought some tools down, yes.

Q. Did you have to buy any tools for the Naval Air Station job?

A. Yes, I did, sir.

Q. Where did you buy them?

A. At various hardware stores.

Q. Can you think of any? Do you know any names?

A. I think there's one right around the corner from where Mr. Milanovich lives, and there was one in the Southern Shopping Center.

Q. All right, the one at the Southern Shopping Center, you say you and Mike went there; is that correct?

[fol. 770] Mr. Parsons: I do not recall that testimony.

Mr. Varoutsos: All right.

By Mr. Varoutsos:

Q. Well, let me ask you, who was with you?

A. Well, Mike was with me on several occasions, Clay was with me on several occasions, and a few times Mike and Christ went. I'd say at one time or another we all was out buying tools.

Q. Who is "all"?

A. That includes myself, Mr. Milanovich, Christ and Grimmer.

Q. When you were out buying these tools with that group or any part of that group, no one else ever accompanied you?

A. Well, sir, I couldn't answer that yes or no.

Q. You could not?

A. No, I don't remember how we went to the store or back to the store. All I remember is that we went to the store. I mean how we—

Q. In other words, if there was someone else driving, you would not remember that; that would be hard for you to remember?

A. Well, no, sir, I don't recall.

Q. You do not recall. Were there any women with you [fol. 771] at any time when you went to these various places with these various people? Was there any women with you?

A. I don't believe there was any women in the stores with us, no.

Q. Transporting?

A. Even that I can't remember.

Q. And you thought you have tried to think hard. You thought about it and you do not remember anyone else being with you?

A. I can't say for sure.

Q. Was Scotty with you?

A. I don't ever remember Scotty being there.

Q. You do not remember Scotty?

A. No, sir.

Q. Now, when you were at one of these places, either the Naval Air Station or the Amphibious or Commissary place, you say that someone pointed out the safe to you; is that correct, and that was Mike?

A. Yes, sir.

Q. And did you tell that to the F. B. I.?

A. Did I tell that to the F. B. I.?

Q. Yes.

A. Well, sir, to be perfectly frank with you, I think I did.

Q. All right.

[fol. 772] A. I am not sure.

Q. Now, was it both safes he pointed out to you or just one?

A. You mean in both places?

Q. In both places.

A. Yes, they were both pointed out.

Q. By Mike?

A. Yes.

Q. Did anyone else ever point out a safe to you?

A. Virginia did.

Q. Well, I am sure of that. And anyone else? You mentioned Mike and Virginia.

Mr. Parsons: I would like to have the remark stricken from the record, your Honor.

The Court: Yes, strike the remark, "I am sure of that."

I think he would like to know, Mr. Guerrieri, whether anyone else other than Mike Milanovich or Virginia Milanovich assisted in pointing out a safe at either the Naval Air Station or the Little Creek Amphibious Base.

The Witness: Outside of Mr. Milanovich, no.

[fol. 773] By Mr. Varoutsos:

Q. When you say "Mr. Milanovich," of course you mean—

A. Mike Milanovich.

Q. Did you ever tell the F. B. I. that Steve pointed out the safe to you?

Mr. Parsons: If your Honor please, I am going to object to that question until he establishes that such statement is in those reports. I do not believe it is in there.

Mr. Varoutsos: It is, I promise you that, and I have seen it.

Mr. Koutoulakos: It is in these reports. We are going to introduce them. There is no question about it.

The Court: You are not going to introduce the reports. You can put the agent on to testify.

Mr. Parsons: I think the correct statement is that he pointed out the building, not the safe.

A. Would you say that question again, sir?

By Mr. Varoutsos:

Q. You did not understand my question?

[fol. 774] A. Would you repeat it, sir, please?

Q. My question to you originally was or rather, you said this morning to Mr. Parsons that Mike pointed out the safe to you, and when I asked you who pointed out the safe to you, you said Mike and then you added Virginia. Now, my question to you was, had anyone else pointed the safe out to you, and his Honor said "or assisted," some words to show that the safe was being pointed to by someone other than Mike and Virginia, and you said, no, then my next question to you was, didn't you tell the F. B. I. that Steve Milanovich pointed out the Navy Exchange safe?

A. I don't remember making that statement, sir.

Q. You do not. All right, let me read you this: "He stated, however, that Steve Milanovich pointed out the Navy Exchange safe to him and he noted the safe could be easily ripped and entrance to the safe obtained."

A. I know that doesn't pertain to both Naval Bases, sir. I remember that now.

Q. "He stated, however, that Steve Milanovich pointed out the Navy Exchange safe to him." Maybe you did not catch that part. "And he noted the safe could be easily ripped and entrance to the safe obtained."

A. I remember the safe that we were talking about. Steve and I were talking about at—

Q. Excuse me. My direct question to you is, did you [fol. 775] tell the F. B. I. just what I read to you that is in this report?

A. I might have, yes.

Q. And were you holding that back?

A. Well, no, I wasn't holding that back, sir.

Q. Can you—

A. I might have worded it wrong or said it wrong.

Q. Said it wrong. Now, in this report you stated definitely Steve Milanovich; today you are in court under oath saying that it was Mike and Virginia. Now, is there any reason for that?

A. Yes, sir.

Q. That you were confused?

A. The reason I'm confused, sir, is this, of the safe at the both Air Bases, it was Mike and Virginia. The safe that you are talking about is another safe, sir.

Q. You told the F. B. I. the Navy Exchange safe. Are there two that we could be—

A. It was on the Navy Station, sir.

Q. The Navy Exchange safe?

A. But not at the Post Exchange, sir.

Q. Then this report was taken by the F. B. I. wrong?

A. I might have said it wrong, sir.

Q. Then you might have given it to them wrong and [fol. 776] they put down exactly what you said?

A. Possibility.

Q. But either way, that statement here is not correct, that the F. B. I. has?

The Court: You mean the statement is not correct or the facts as contained in the statement?

By Mr. Varoutsos:

Q. The facts as contained in the statement, that is even better.

A. I could explain that, sir.

The Court: Yes, you may explain it, Mr. Guerrieri.

A. As far as that safe that Steve and I were talking about, it was in view in the Club where Mr. Milanovich was the manager, I believe. We were talking about that safe at first, and I had remarked to Steve that it could be easily ripped.

By Mr. Varoutsos:

Q. I see.

A. That is on the same Naval Station, sir.

Q. I see. Now, you explained that particular state-

ment. Did you ever tell the F. B. I. about Mike and Virginia, about the main safe in question?

A. Have I ever told the F. B. I. what, sir?

Q. You see, you tell them here in your statement that it was Steve at the Naval Exchange safe, but you just now [fol. 777] explained that that was some other safe that was not bothered, so you did not bother to tell them about Mike and Virginia, about the main safe, this case is about, this one we are questioning you about; you told them something that did not even happen—about another safe—is that correct?

A. Sir, whatever I told the F. B. I., I told the F. B. I. the truth.

Q. I do not think you are very responsive to my question.

The Court: Ask it over again, then. That is for the jury to determine.

Mr. Varoutsos: All right.

By Mr. Varoutsos:

Q. In this statement you told the F. B. I. that "Steve Milanovich pointed out the Navy Exchange safe to him and he noted the safe could be easily ripped and entrance to the safe obtained." So when I asked you about that—because you said Mike and Virginia—you explained that it was some safe that was not ripped open, not involved in this case. Now, I ask you, did you tell them about Mike and Virginia, about the safes in question?

A. Yes, I told them about the safes in question.

Q. You did. All right. About Mike and Virginia pointing them out?

A. Yes, sir.

Q. Do you know what date that was?

[fol. 778] A. Sir, I'm sorry, but I couldn't tell you the exact dates.

Q. Now, did you ever make a demand upon the Milanoviches or through anyone else that if they paid you \$15,000.00 that you would clear them? Answer that yes or no.

A. No, sir; no, sir.

Q. Just explain. Any amount? Is the amount wrong?

A. No, it isn't a matter of the amount at all, period, sir.

Q. You never made that statement to anyone?

A. No, sir.

Q. You're sure?

A. I believe I said something to you one time, sir.

Q. To me?

A. Yes, sir.

Q. And when would that be, Sunday morning when I saw you?

Q. When you came over to the County Jail to see me, sir.

Q. I am not referring to that. First, I may state I do not recall that. But did you ever make that statement or make a request of anyone?

A. As I said, no, sir.

Q. Never on the 'phone to anyone?

[fol. 779] A. No, sir.

Q. So that is just not so?

Q. Not to my knowledge, it isn't.

Q. All right. Now, the Naval Air Station job, what time did you get to the Naval Air Station?

A. Well, sir, as I said before, it was anywhere from around 10:30 on up. I don't remember specifically the time.

Q. About 10:30 on up?

A. Yes, sir. All I know is we had to be out of there by one o'clock.

Q. So you got there at approximately 10:30 and you were out of there by one o'clock?

A. I didn't say we arrived there at 10:30. I know we got out of there after one o'clock.

Q. About how much after?

A. Roughly I can't tell you, sir—a half hour, forty-five minutes, an hour, somewhere around there.

Q. Did you have a watch along?

A. No, sir.

Q. I see. And then it could have been one, two o'clock, 2:30?

A. I beg your pardon?

Q. It could have been, then, one, 1:30, two o'clock?

A. I know it was after one, sir.

[fol. 780] Q. Would you say it was before two?

A. Guessing, I would, yes.

Q. You would guess?

A. I am guessing at the time, answering your question, guessing at the time I was there, yes.

Q. But giving you leeway both ways, it would be between one and two o'clock?

A. Roughly around that, yes, sir.

Q. Who brought you onto the Base at that time?

A. Virginia and Mike Milanovich.

Q. Just the two?

A. Yes, sir.

Q. No one else was there?

A. I don't think so.

Q. In the car?

A. No, sir.

Q. And how did you get off the Base?

A. By Virginia and Mike Milanovich.

Q. And where did they meet you?

A. They were parked alongside this Officer's Club, sir.

Q. And where did they pick you up?

A. We went to them, sir.

Q. All right. How far was that from the building where the safe was?

[fol. 781] A. Well, it wasn't very far, sir.

Q. That does not tell me much.

A. I couldn't say the exact distance. I would say about a block and a half, sir.

Q. About a block and a half?

A. Yes, sir.

Q. Did you have any of the money with you at that time?

A. No, sir.

Q. You were empty handed, I mean?

A. Yes, sir.

Q. You were not carrying anything?

A. Weren't carrying a thing, sir.

Q. And you met them about a block away, a block and a half, did you say?

A. Roughly, sir. I don't know for sure.

Q. Yes, roughly. And you got into the car there?

A. Yes, sir.

Q. You and Grimmer?

A. Yes, sir.

Q. And that's the only two that were there?

A. Just Grimmer and I, sir.

Q. Did you have to go back in the building after that?

A. Yes, sir.

[fol. 782] Q. Did they drive you back to the building?

A. Well, sir, the first time they drove us back to the building where we took—picked the money up from under the truck, put it in the trunk and left. Then we came back to the Post, went back into the place and picked up the change and brought the change down, sir, and put it in their trunk.

Q. Did you have the currency?

A. The first time we got the currency.

Q. You had the currency the first time?

A. Yes, sir.

Q. And then when you came back with Mike and Virginia, you got the change?

A. Yes, sir.

Q. And the tools?

A. The tools we left there, sir.

Q. On the Naval Air Station, you left the tools?

A. Yes, sir.

Q. And then you got off the Base, you drove off the Base?

A. Yes, sir.

* Q. Now, on the second, on the Amphibious or Little Creek, who brought you there?

A. Mike and Virginia Milanovich.

Q. By themselves?

A. Yes, sir.

[fol. 783] Q. And, finally, did anyone pick you up?

A. Yes, sir.

Q. And who was it?

A. Virginia and Mike Milanovich—excuse me, I take that back, sir. I'm sorry. Wait a minute.

Q. All right.

A. As I said, Mike and Virginia brought us to the Base—to the Base, but on account of what happened, they had left and when they came back to the designated place to pick us up, Mike wasn't in the car. That was when Millie was in the car.

Q. Millie was there that time with—

A. Yes, Virginia said she was scared to come back alone, so she asked Millie to come with her.

Q. I see. And then those two picked you up off of the Base, was it?

A. Yes, sir.

Q. And you flagged them down?

A. Yes, sir—I'm sorry, sir. I didn't flag them down. It was Grimmer that flagged them down.

Q. Grimmer. Now, when you went to buy some oxygen or some sort of tank, where did you go?

A. I don't remember the name of the place, but I know that we went to several places.

Q. Well, did you make a purchase in one place?

[fol. 784] A. Yes, we did, sir.

Q. And did you buy it, buy this tank or lease it?

A. I don't know whether it was given to us on a lease or whether we bought it outright. I know that we paid for it.

Q. And did you all pick it up then?

A. Yes, we did.

Q. You did. And it was you and Mike that time?

A. That's right, sir.

Q. No question about that?

A. No question about that, sir.

Q. And did either one of you sign any paper?

A. Sir, I can't swear to that. There is a possibility. I don't know. I don't remember offhand.

Q. Now, may I ask you to write "Mike."

A. "Mike"!

Q. Just write the word "Mike" four or five times.

A. You will have to wait a minute, sir. I'm a little nervous.

Q. I see. Try to relax yourself.

A. I will try, sir.

Q. Could you come over here where the jury can see you?

A. Yes, sir.

Q. Write it natural, just like you would be writing.

[fol. 785] A. That's M-I-L-A-N—

Q. Just "Mike," the word "Mike."

A. All right, sir.

Q. Write "Mike" four or five times down there.

A. Any other way you want me to write it?

Q. That is your natural handwriting?

A. Yes, sir.

Q. You were going to show me something in your hand. Was that for some purpose?

A. No, sir.

Q. Now, at that time you were going to buy this—whatever you were buying at the—what was it that you were buying, some sort of oxygen or tank, or what?

A. Yes, I wanted to get some oxygen and acetylene.

Q. And at that time you were anticipating a safe job?

A. Yes, we were anticipating this job at the Commissary, sir.

Q. Were you nervous at that time or were you calm? Do you get my question?

A. I got your question. What do you mean? When I was buying this stuff?

Q. Yes, while you were there buying this.

A. Well, I tried to act natural; if that's what you mean.
(fol. 786] Q. I see. And if they asked you to sign something at that time, either you or the other person you were with—Mike—would that have concerned you any?

A. I don't believe so.

Q. Could you give your address?

A. Sir, as I recall now, I'm pretty sure that Mike signed it.

Q. Oh, Mike signed it?

A. Because I think he told me he used Crawford's name. He signed it Crawford.

Q. I see.

A. Under the name of Crawford.

Q. Crawford?

A. And I told him he shouldn't have done that because Crawford lived right next door to him.

Q. I see. You remember that?

A. Oh, yes, I remember that.

Q. Were you standing there when he gave the name?

A. No, he told me afterwards.

Q. Were you standing there when he gave the name?

A. Sir, you are asking little things I just don't remember offhand. Would you repeat that again, sir?

Q. All right. You were making the purchase, weren't you? I mean you were the one who knew what to use?

A. Yes, sir.

[fol. 787] Q. And you were there when the purchase was being made?

A. Yes, sir.

Q. And do you know whether you leased it or bought it and whether anything was signed?

A. Sir, as I said, as far as signing anything goes, I don't remember.

Q. All right. Were you present when a name was given, this name Crawford?

A. I don't even remember that, sir.

Q. You do not remember it?

A. At this specific time you are talking about?

Q. That is right.

A. I don't remember exactly for sure now.

Q. But you do remember Mike telling you "Crawford"?

A. Yes, sir.

Q. All right. And you were not present when anyone signed anything, when the man was making out the receipt so you could pay for it?

A. I remember making out a receipt.

Q. Oh, you do remember that?

A. I don't remember signing anything.

Q. You remember the man making out the receipt?

A. Sir, I can't swear to that. I mean you're asking me something that I remember vaguely about—little things like [fol. 788] that.

Q. But you do not remember when you went in there, standing at the counter, wherever you were, a receipt being made out and a name given, and you do not recall any of that—if a receipt was made out or if a name was given or if anyone signed anything? Do you remember any of that at all?

(A glass of water was handed to the witness.)

The Witness: Thank you, sir. Pardon me a minute.

Mr. Varoutsos: Take your time.

By Mr. Varoutsos:

Q. Let's take it one at a time.

A. I think I can answer that question for you right now.

Q. All right.

A. As I said, I don't remember the man writing the invoice.

Q. How do you know it was an invoice?

A. Well, I imagine if they are going to write anything, it's got to be an invoice.

Q. I see. That is what it is. So you are correct there. Did you guess at that?

A. Sir, I went to the tenth grade in school. I ain't that stupid.

[fol. 789] Mr. Parsons: If your Honor please, the examination is certainly liberal. Let's not argue the case all along.

The Court: I suggest that you let him see the paper you have.

Mr. Varoutsos: Not yet, your Honor. I'd rather not.

The Court: All right. Let's go on to another question. He said he does not know.

By Mr. Varoutsos:

Q. You do not know whether a receipt was made out?

The Court: He said he does not.

By Mr. Varoutsos:

Q. You do not recall a name being given by Mike?

Mr. Parsons: Your Honor, that is the tenth time—

The Court: He said he does not know. Now, if you want to show him the slip to help him refresh his memory, it might refresh him. Otherwise, drop that line of questioning and proceed to the next question.

Mr. Varoutsos: All right.

By Mr. Varoutsos:

Q. Mr. Guerrieri, then you do remember, after you left [fol. 790] there, that Mike told you that he gave this person's name, Crawford, who lived next door to him?

A. Well, sir, let me put it this way: I can't give you a direct answer to your question now. I don't know how that came about or how we came to the subject of talking about that, but I do remember him saying that he said he signed—used Crawford's name, the fellow that lived next door to him, and I remember that. I will tell you why I remember that: I said, "Because you shouldn't have done that because on account of the man lives right next door to you and in case that tank was left behind—" —there was a serial number on it— "it could be traced to Mr. Crawford."

Q. I see. You think that was rather foolish?

A. Personally, I think the whole thing was foolish but, nevertheless, that was foolish, yes.

Q. Did he discuss with you what address he gave? Did he give his own address or did he give Mr. Crawford's address, or did you discuss that?

Mr. Parsons: If your Honor please, I am going to object to that question.

A. Sir, I can't answer that for certain.

Mr. Parsons: This is certainly not within the scope of the examination, and when Mr. Varoutsos has the actual documents in his hands and asks a question that he knows is [fol. 79:] not correct—

Mr. Varoutsos: I think everybody on the jury knows why I am doing that. I have it right here, but I did not want to show it to him.

The Court: All right, let's show it to him.

Mr. Varoutsos: All right.

By Mr. Varoutsos:

Q. Take a look at this. Do you remember that?

A. Yes, I remember this now. No, I don't remember this piece of paper, no. This piece of paper, I don't remember.

Q. You said you remembered something. What were you referring to?

A. The Wallace L. Carson, the thirty-seven forty-one. Now, I will tell you why I remember that now. Because Mike and I were suppose to go half and half on the price of the tank and Mike had paid the whole bill and I told him I would owe him half for the tank.

Q. And what was that refreshing your memory to?

A. The price on there, thirty-seven, forty-one.

Q. I see. And then Mike paid for it at the place?

A. Yes, sir.

Q. When I showed you this, you said you remembered it [fol. 792] then because the name—

A. I don't remember it that specifically. I remember the name, Wallace L. Carson, and the amount of money, sir.

Q. Parson?

A. Carson, Carson, or Crawford, or whatever it is—some-where around there. By golly, I think you're right. His name is Carson or Crawford, something like that. I know the man lived—

Q. Take a look at this.

A. I will put it this way—

Q. All right. Just look at this and tell me anything you want.

A. I guess the name must be Carson.

Q. It must be?

A. As I was saying, I do remember him saying he lived next door.

Q. Are you answering some question of mine?

A. I'm sorry, sir.

Q. Now, I believe on direct examination by Mr. Parsons you said that you spent one night at Millie's home; is that correct?

A. I didn't get a chance to finish that, sir.

Q. Didn't Mr. Parsons give you a chance to finish it? [fol. 793]

A. From the Milanovich's home, we went to—

Q. Let me ask you that. You said you did not have a chance to finish. Before lunch—

A. I remember the question.

Q. Now, wait a minute. Let me ask you my question. Mr. Parsons asked you and you stated you spent one night at Millie's. Now, I'm putting the same question to you and you answered to me you did not have a chance to finish. Are you telling the Court and jury that you were cut off at that time, so we will keep the record straight?

A. No, sir. As I was talking, I just talked and skipped—skipped by it, and I remembered that, what had happened, and I didn't say what had happened, so I just let it go.

Q. I see. I am asking you—and I will give you all the time you want—how many nights—and if it is one like you said before, say so—how many nights did you spend at Millie's?

Mr. Parsons: Over what period of time?

By Mr. Varoutsos:

Q. From the first time that you arrived here with Steve and Grimmer, Steve Milanovich and Grimmer, Clay Grimmer?

A. Well, sir, shall we start with the first time, sir, or the second time?

[fol. 794] Q. Right from the beginning, how much time did you spend at Millie's? How many nights?

A. Well, sir, I'll tell you. Myself, personally, I was staying at Virginia and Mike Milanovich's home.

Q. Now, I believe you—

A. Do you want me to repeat that?

Q. Yes, just repeat that.

A. I said myself, personally, I was staying at Virginia's and Mike's home and Mike's brother, Steve, was staying down at Mildred's home.

Q. Then you only stayed there one night? That is the only question I am asking you.

A. Excuse me. Now, I didn't say that. You are asking and I am going to tell you.

Q. All right.

A. And I stood at Millie's home a couple of times—Clay and I did the first time. Clay and I stood there a few times and Steve and Richard and Mildred.

Q. Now, from the first time that you came down, did you spend any time at any motels?

A. Yes.

Q. Which motel?

A. On our arrival the first time we didn't want to impose, so we checked into a motel, sir.

Q. Do you recall where that was?

[fol. 795] A. I don't recall the name of the motel, sir.

Q. Do you recall when it was?

A. When we first came down.

- Q. When you first came down.
A. When we first came down to—
Q. And about when was that?
A. That was prior to the first robbery, sir.
Q. And how did you register?
A. I believe I used the name Sherbundy, sir, I believe.
I don't remember, sir.
Q. Was that the only motel that you stayed—
A. No, sir.
Q. And what other motel besides—
A. I don't know the names of the motels, sir, but I remember two motels we stayed at—
Q. Two motels—
A. —at two different, various times.
Q. I see. What kind of car were you driving on either occasion?
A. Well, at one time we were driving a '52 Buick and one time a '53 Buick.
Q. Did you ever register as Harry Berman and John Stein?
A. Repeat that, sir.
Q. Did you ever register at a motel and give the name [fol. 796] of Harry Berman and John Stein?
A. Yes, sir, I did.
Q. And did you use the name John A. Harrell at one time?
A. I never used that name, sir.
Q. You never used that name. Now, on the Naval Air Station, when you went back to pick up the coins, I think you said you went back to pick up the coins—
A. Yes, sir.
Q. —was that the same evening before you got off the Base?
A. Yes, sir—excuse me. Now, are you referring to the—
Q. Naval Air Station.
A. That's the first one, sir?
Q. That is the first one.
A. The first one, yes, sir.
Q. And once you got off, after you committed the robbery, you never went back on the Base that day or any other time?

A. I don't understand that question.

Q. On the Naval Air Station job, that is the first job—

A. Yes, sir.

Q. —you went on the Base.

[fol. 797] A. Yes, sir.

Q. There came a time that you got off the Base?

A. Yes, sir.

Q. Did you ever go back on the Base after that?

A. Yes, sir.

Q. When was that?

A. To pick up the change, sir.

Q. Was that the same night?

A. Same night, sir.

Q. You left the gate and came back on in?

A. Yes, sir.

Q. When you came back, whom did you come with?

A. Mike and Virginia, sir.

Q. Just Mike and Virginia, as you stated; is that correct?

A. Well, sir, I will be very frank with you. Millie might have been along, but I just can't remember for sure. I don't know whether she was there or not. I know she had come back with Virginia one time. She had been in the car a few times, but I couldn't swear for sure whether she was with us or not, sir.

Q. Did you tell the F. B. I. that?

A. I beg your pardon, sir?

Q. Did you tell the F. B. I. that she was along?

A. I might have, yes.

[fol. 798] Q. You might have?

A. I don't know, sir. I mean this time remembering back now—I was always confused about that issue, to tell you the truth.

Q. If you were confused, you would never tell the F. B. I. that a person that was not there was in the car? You would have no reason to do that?

A. No, sir.

Q. I read to you a statement that you gave on November 4, 1958: "He stated that he definitely recalls that Gauger accompanied them on the second trip to pick up the coins."

A. On the second trip, sir?

Q. That is right.

A. You say on the second trip to pick up the coins? It's true I may have made that statement, sir, but I believe—

Q. Was that statement true when you made it?

A. Well, if I made that statement, I believe it was true. I could have been mistaken.

Q. Now, you say you were confused on that?

A. Hold it now, just a minute, sir. I mean let me see if I can explain it to you, if that's all right.

Q. Sure, go ahead.

A. As I said, as far as Millie—I'm a little bit confused in this respect: I know that Millie had been in the car with [fol. 799] us a few times. I remember definitely when she came back with Virginia at one time, but as far as going or coming, I'm not sure.

Q. All right.

A. I'm not sure, but—

Q. Keep—

A. With respect to that statement, I remember making that statement.

Q. All right. On November 4th you remember making the statement that—

Mr. Parsons: I believe you are reading—the date is not important, but I believe you are reading the dates wrong. I think you will find the date of that statement was October 2nd. That is the date it was written. That is the date it was dictated and this is the date it was taken.

Mr. Varoutsos: I see. All right.

By Mr. Varoutsos:

Q. On October 2nd, the statement that you made, as it is here: "He stated that he definitely recalls that Gauger accompanied them on the second trip to pick up the coins," and you were, from this statement, pretty definite on October 2nd; is that correct?

[fol. 800] A. I remember making the statement, sir, yes.

Q. Now, on October 2nd, when you gave that statement, that definite statement, you said that Millie Gauger, Mike, Virginia and you went back to pick up the coins; is that right?

A. Will you repeat that question again, sir?

Q. According to this October 2nd statement, that definite statement you made, you stated Millie Gauger, Mike and Virginia and yourself went back to pick up the coins; is that correct?

A. Well, sir, as I said—now as I think about it, I could have been confused.

Q. All right. You do know that Mike, you and Virginia were there; there is no question in your mind on that?

A. Yes; there is a possibility that she could have been there. As I said, she was in the car a few times.

Q. I see. Leave Millie out for a minute. But Mike, Virginia and you were in the car?

A. That I remember, yes.

Q. And no one else?

Mr. Parsons: I do not object, but he has asked this same question about four times. He said it was possible she could have been there.

The Witness: Will you please do me a favor and ask me [fol. 801] that question again?

The Court: Gentlemen, may I have the floor?

Mr. Varoutsos: Yes, sir.

The Court: It is for the jury to determine whether this or any other witness should be believed, and I appreciate the fact that the testimony of an accomplice is subjected to the closest of scrutiny and should be so scrutinized by a jury, but, Mr. Varoutsos, we could be here fifteen days for you to ask that same question. If this witness says he does not remember, that is it.

Mr. Varoutsos: Your Honor, I agree with you, and I do not want to belabor the point and when Mr. Parsons said, you asked that question five times—

Mr. Parsons: No, four times.

Mr. Varoutsos: —four times and then the witness says, "Please repeat that question again," so I was just trying to—

The Court: Ask it this last time and let's quit.

Mr. Varoutsos: All right.

[fol. 802] The Court: If he says he does not remember, go to the next question.

Mr. Varoutsos: My question is phrased a little differently and I will do exactly that.

By Mr. Varoutsos:

Q. You said you do not remember whether Millie was along or not, so we will leave Millie out. We have established there were three people in the car, yourself, Mike and Virginia.

A. When?

Q. When you went back to pick up the coins on the same evening.

A. No, Grimmer was with me too, sir.

Q. Grimmer was along too. Now, getting away from the October 2nd statement, back on July 14th, you say, "Guerrieri stated that he and Grimmer were driven back to the Naval Air Station by Mike and Virginia and reentered the Navy Exchange by the fire escape, which is the way they initially entered, and retrieved the silver."

A. Yes, sir.

Q. And at that time you did not mention Millie Gauger.

A. Well, sir, as I said—

Q. Is that true?

A. I remember that Grimmer and I retrieved the money, [fol. 803] sir, yes. Now, as I said before, whether Millie was there or was not there, I can't say for sure.

Q. Was there any money split up between you and Grimmer on the Amphibious job?

A. On the Amphibious job, sir?

Q. Yes.

A. No, sir.

Q. You got no money out of that?

A. No, sir.

Q. The second job, the Little Creek job, what time did you get there?

A. Well, sir, roughly around midnight.

Q. Roughly around midnight. And what time would you say you left?

A. I don't know the exact time, but daylight was setting in.

Q. Daylight was setting in?

A. Was setting in.

Q. And you are sure of that?

A. Certainly I'm sure, because Mike rapped on the windows, "hurry up."

Q. And at that time you and Grimmer did not split any money; you got no money for yourself?

A. I got no money for myself.

Q. Who went with you on that job?

[fol. 804] A. Grimmer, my brother-in-law.

Q. Christ Sofocleous?

A. Myself, Virginia and Mike.

Q. And who picked you up?

A. Virginia and Millie.

Q. Has anyone—I am not inferring that they have, I am just asking you—has anyone made any promises to you about your testimony, helping you on any cases anywhere else?

A. No, sir.

Q. Or your time that you have now?

A. No, sir.

Q. No one has made you any promise or made any inferences?

A. Nobody has made me any promises, period, sir.

Mr. Varoutsos: No further questions.

The Court: Mr. Parsons, do you have any further questions?

Mr. Varoutsos: Oh, your Honor, I would like to—sorry.

Mr. Parsons: No further questions.

The Court: You wish to introduce that document you have there?

Mr. Varoutsos: I would like to have this identified, if I may.

Mr. Parsons: If your Honor please—

[fol. 805] The Court: The samples of the handwriting.

Mr. Parsons: I must object to these samples of the handwriting at this time. I can see no purpose for them. There is nothing to tie them in in connection with anything in this trial in the last four days that I can see.

The Court: The handwriting was done right in the presence of the jury and within a matter of one or two feet, or less than that.

Mr. Parsons: I do not deny he has put it down, but I do not see the purpose and, therefore, I would like to know the purpose, if any.

Mr. Varoutsos: I would just like to have it identified at this time. I am sure it will be tied in.

The Court: All right, let it be marked Defendant's Exhibit No. 2 for identification. I believe it is No. 2, is it not?

The Clerk: Yes.

(The samples of handwriting written by Benjamin Thomas Guerrieri were marked as Defendant's Exhibit No. 2 for identification.)

[fol. 806] Mr. Parsons: No further questions.

The Court: All right.

Mr. Parsons: Call Christ Sofocleous.

CHRIST SOFOCLEOUS, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Sofocleous, I wonder if you would state your name and where you live, sir.

A. Christ Sofocleous, Campbell, Ohio.

Q. Campbell, Ohio?

A. Yes, sir.

Q. I wonder if you would speak loud enough so these gentlemen can hear you, sir.

A. Christ Sofocleous, Campbell, Ohio.

Q. Mr. Sofocleous, I believe that you have pleaded guilty to certain charges involving thefts from the Naval Amphibious Base Commissary Store; that is correct?

A. Yes, sir.

Q. And you have been placed on probation, I believe?

[fol. 807] Yes, sir.

Q. Mr. Sofocleous, I call your attention to approximately the first day of June 1958, sir, and ask you if you partici-

parted in the theft of goods from the Naval Commissary Store?

A. Yes, sir.

Q. I wonder if you would tell the jury approximately when you arrived in Norfolk prior to that time, sir?

A. About a week, about a week before it happened.

Q. Where did you stay while you were here during that time?

A. At the Milanovichs.

Q. I wonder if you would speak a little louder.

A. At the Milanovich's home.

Q. Who was with you at the time, sir?

A. Ben Guerrieri and Clayton Grimmer and myself.

Q. Did all three of you stay there together?

A. Yes, sir.

Mr. Varoutsos: Your Honor, I cannot hear the witness. He is behind that post there.

By Mr. Parsons:

Q. Let me back up a little bit and maybe if you will talk to me over here, maybe it would be of some help. How did you get to the Milanovich home when you arrived in Norfolk? Let me ask you this: How did you get to Norfolk on [fol. 808] that trip?

A. By plane, sir.

Q. How did you get to the home of the Milanoviches' from there?

A. Mike Milanovich picked us up.

Q. Did you make the arrangements with him to be picked up or how do you know they were made?

A. No, I think, when we arrived at the airport, I think one of the boys called and he came out and picked us up.

Q. All right, sir. Thank you, sir. Now, I call your attention to June 1, 1958, and I wonder if you would tell the jury just what occurred on that evening, sir, and whom you were with?

A. Well, June 1st—

Q. June 1st.

A. —I was with Ben Guerrieri, Mike, Virginia Milanovich, myself, Clayton Grimmer. We went to the Naval Base.

Q. And the Naval Base—

The Court: Naval Base? Is it the Naval Amphibious Base or some other Base?

The Witness: Well, June 1st—I'm not too familiar with the Bases.

By Mr. Parsons:

Q. Sorry.

[fol. 809] A. I'm not too familiar with the Bases.

Q. Where did you go after you got on that Base?

A. We went into the Commissary, I guess.

Q. What kind of a building was it, do you recall?

A. It was a wooden building.

Q. About what time of night or day was that, sir?

A. About eleven or twelve o'clock.

Q. About eleven or twelve o'clock?

A. Between eleven and twelve, sir.

Q. What did you do in that building? Let me ask you this—oh, all right, go ahead. What happened in that building, sir?

Mr. Varoutsos: Your Honor, I am sure he can talk louder than that.

The Court: What would you suggest that I do?

Mr. Davis: Have him speak up.

Mr. Parsons: Talk a little bit louder.

The Court: Mr. Parsons told him four times and I would like for him to speak louder myself, but I do not know the solution to the problem.

By Mr. Parsons:

Q. What did you say that you did in the building, sir?

[fol. 810] A. We tried to get in the safe, sir.

Q. And you were successful, I believe; that is correct, isn't it?

A. Yes, sir.

The Court: Mr. Varoutsos, move over here now.

Mr. Varoutsos: I can see his face now. I will move over.

By Mr. Parsons:

Q. After that was accomplished, what happened, then, Mr. Sofocleous?

A. Well, we left.

Q. Did anyone meet you after you left the building at that time?

A. Outside the Post we met someone.

Q. You say "outside the Post"?

A. Yes, sir.

Q. What happened immediately after you left the building, if you recall.

A. Immediately after we left the building?

Q. Yes.

A. I can't recall what happened.

Q. I am sorry.

A. I can't recall what happened.

Q. All right, sir.

[fol. 811] A. All I know is we tried to get out.

Q. How did you get off the Post then?

A. We walked off.

Q. What happened, if anything, to any funds that you received out of the safe or removed from the safe?

A. We left it on the Post.

Q. Do you recall approximately where you left it?

A. No, I couldn't.

Q. Did you make a prearranged meeting place with anyone in case there was some change in plans of any kind?

A. Yes, sir.

Q. And where was that meeting place, so far as you know?

A. Well, it was supposed to be on the Post.

Q. What was to happen if the meeting did not take place on the Post?

A. Just—we was just on our own.

Q. Did anyone pick you up later on that evening off the Post?

A. Yes.

Q. Who picked you up, if you recall?

A. Virginia and Millie.

By the Court:

Q. Where were you tried on your plea of guilty?

A. In Cleveland, sir.

[fol. 812] Q. In Cleveland?

A. Yes, sir.

By Mr. Parsons:

Q. Mr. Sofocleous, where did you go after you were picked up by Virginia Milanovich and Millie Gauger?

A. Milanovich's home.

Q. And what happened at the home then?

A. Well, we just laid around the house there till the following day.

Q. Did anyone in that group return to that Base again during that day, to your knowledge?

A. Yes.

Q. Who went back, if you know, sir?

A. Bennie, I believe, Clayton Grimmer, Virginia. I guess that was it.

Q. Do you know, did Virginia Milanovich or Mike Milanovich state why they went back on the Base or give any reason why they went back on the Base?

A. No, sir.

Q. Did you receive any of the proceeds from this theft, Mr. Sofocleous?

A. No, sir.

Q. Let me ask you this, Mr. Sofocleous: When you flew down, what name did you use on your ticket, sir?

A. Mr. Christopher.

[fol. 813] Mr. Parsons: Answer any questions that counsel might have, Mr. Sofocleous.

Mr. Koutoulakos: Excuse me—

The Court: Have you had an opportunity to see the statements yet?

Mr. Koutoulakos: No, your Honor, but while they are looking—

The Court: We will take a brief recess at this time so you may have an opportunity to look at the statements.

Mr. Koutoulakos: Thank you, your Honor.

(The Court recessed at 3:15 p.m.)

(The Court reconvened at 3:30 p.m.)

Cross examination.

By Mr. Koutoulakos:

Q. Now, Christ, you do not mind if I call you Christ?

A. No, sir.

Q. As I understand it, the gist of your statement was that, to the best of your recollection, you were involved in the second robbery?

A. Yes, sir.

Q. Which we call here the Amphibious robbery?

[fol. 814] A. Yes, sir.

Q. And as I recall your testimony in brief, you came here by car with Bennie and Clay; is that correct?

A. No, sir, by plane.

Q. Oh, by plane. With Bennie and Clay, that is, Grimmer and Guerrieri?

A. Yes, sir.

Q. Incidentally, Bennie Guerrieri is the gentleman you were talking to out there?

A. Pardon me?

Q. Ben is the gentleman you were just talking to on direct examination?

A. Yes, sir.

Q. You left the stand and talked to Bennie?

A. Yes, sir.

Q. He was the chap that testified before you?

A. Yes, sir.

Q. What was the purpose of talking to him?

A. We were just talking about home.

Q. About home? Have you talked to him before today regarding this matter—

A. Yes.

Q. —about the case?

A. Not about the case, no.

Q. Now, before you came here, has anybody—you are

[fol. 815] on probation, of course, and I understand you did not get any part of the money at all?

A. No, sir.

Q. Now, Christ, you are concerned about your probation?

A. Yes, sir.

Q. Were you told by anybody in authority, your probation officer or anybody else, that if you did not testify your probation might be revoked and you would do time in jail?

A. No.

Q. You were not told that?

A. No, sir.

Q. Were you told anything at all about the effect on your probation with respect to your testimony?

A. I checked with my attorney.

Q. Pardon?

A. I checked with my attorney.

Q. Never mind your attorney; I am talking about the probation officer now.

A. My probation officer?

Q. Yes.

A. No.

Q. Did anybody tell you that had any authority—I do not mean just a streetwalker—

A. No.

[fol. 816] Q. —or anybody—about the effect on your probation? Now, of course, you came here to tell the absolute truth?

A. Pardon me?

Q. I say you came here to tell the absolute truth?

A. Yes, sir.

Q. Of course, you gave a statement to the F. B. I. in Cleveland on August 25, 1958, and I show you a copy of a statement—

Mr. Parsons: I think you are making the same mistake. This is the date of the statement.

Mr. Koutoulakos: Where?

Mr. Parsons: I will tell you like I told him, this is the

date it was written up, this is the date it was dictated and this is the date it was written.

Mr. Koutoulakos: I am sorry. I had the date, that's right. It has "date" and then "dictated".

Mr. Parsons: Yes, sir.

By Mr. Koutoulakos:

Q. You gave a statement on July 17th?

A. I don't recall the date, but I gave a statement.

Q. Well, it says here, "On July 17, 1958, Christ Sofol [fol. 817] cleous was interviewed by Special Agents W. Richard Gregor and Stanley E. Peterson at which time he furnished the following unsigned statement." You did give him this statement?

A. Well, I guess if that's my statement, that's when I gave it.

Q. Do you think the F. B. I. would change this statement?

A. I don't think so.

Q. You do trust them?

A. Yes.

Q. And at that time the facts were clear in your mind because that was only a short time after the so-called robbery than today; is that correct?

A. That's right.

Q. And the facts should have been more outstanding then when you gave this statement than now?

A. Right.

Q. And today you are telling the Court and you have told the jury, while you are under oath, that it was Millie and Virginia that picked you up; is that correct?

A. Picked us up after we left the Base.

Q. Now, I want to read to you what you told the F. B. I. then: "We then left the area and crawled through the fence and met Virginia and Mike Milanovich, and they drove us to their home." What is the reason for the change [fol. 818] here today, Christ?

A. I don't recall.

Q. Is there any reason why you should forget as to

who picked you up, being that they were important people in your plans that night? Why, today, should you say—

Mr. Parsons: This is pure argument, your Honor.

Mr. Koutoulakos: I do not think so.

Mr. Parsons: Oh, yes.

Mr. Koutoulakos: I am going into the reason for it.

Mr. Parsons: You may roar at the jury but not at the witness.

Mr. Koutoulakos: I am not going to roar at the jury but at the witness.

The Court: You may ask the first part of the question, if there any (sic) reasons why there is a change in your testimony today.

The Witness: No, sir.

By Mr. Koutoulakos:

Q. Is there any reason?

A. No, sir.

Q. You do admit there is a change?

A. Yes, sir.

[fol. 819] Q. There is no question about that?

A. Yes, sir.

Q. Now, your brother-in-law, Bennie, was the one, or was he not, who was instrumental in your pleading guilty?

A. No, I pleaded myself.

Mr. Parsons: If your Honor please, I do not see the materiality of that.

Mr. Koutoulakos: I want to tie it in and show the influence his brother-in-law has on him, your Honor. That is exactly the purpose.

Mr. Parsons: What is the purpose of that?

Mr. Koutoulakos: The purpose of that is to show this whole thing is being engineered by Bennie.

Mr. Parsons: This is argument to the jury. There is not one single fact in the case to show that. There is no evidence to show that.

The Court: He answered the question, no, so that's that.

Mr. Koutoulakos: All right.

By Mr. Koutoulakos:

Q. Now, do you feel, by any conversation that you have [fol. 820] had with Mr. Guerrieri regarding this case, that if your testimony did not implicate Mike and Virginia, his time may be affected in some way?

Mr. Parsons: Your Honor, I object to that question also—purely argumentative and it has no merit at all. There is nothing in this case to justify such a question by any witness at any time.

Mr. Koutoulakos: Your Honor, he is a witness and he can answer the question, and I think it has absolute merit and I think the jury should know.

Mr. Parsons: That is purely argument to the jury, in the second place. It should be stricken from the record.

The Court: If I understand your question of this witness, does he feel that by reason of his testimony that the time for Guerrieri, who is now serving a term, will be lessened; is that it?

Mr. Koutoulakos: No, your Honor. As I understand it, Mr. Guerrieri is awaiting additional action. Now, that is my understanding.

Mr. Parsons: If your Honor please—

The Court: By this Court?

[fol. 821] Mr. Koutoulakos: No, not by this Court.

Mr. Parsons: This may be proper for the Court, but I do not think it is proper for the jury to hear, just from what he has started to say.

By Mr. Koutoulakos:

Q. Have you had any—

The Court: I will permit you to go into the motive—

Mr. Koutoulakos: That is right.

The Court: —but I hope you are prepared to substantiate it in some way. You know, Mr. Koutoulakos, the only people who can fix time for a person accused of a crime would be a Judge or, in some states for state offenses, a jury. It is true that particularly in some State Courts the various Commonwealth Attorneys make recommendations. They do not very often make them with me, and I do not

very often call upon them. Sometimes if I do call upon them, they do not make any recommendations, so that is that; but, of course, I think you have a right, a person, [fol. 822] even though—I think that if it is in this individual's mind that there would be some benefit out of it by reason of his testimony one way or another, I think you have a right to pursue that.

Mr. Koutoulakos: Your Honor, the only thing I am concerned about is whether or not he and Mr. Guerrieri have discussed this thing and has Mr. Guerrieri indicated to him, which was my question, if his testimony did not implicate these people it may affect Mr. Guerrieri's well-being.

The Court: You may ask him whether he and Guerrieri have discussed the effect of Sofocleous' testimony given in this case upon any other charges that may be pending, if any, against Guerrieri in some other locality.

By Mr. Koutoulakos:

Q. Now, Christ, have you and your brother-in-law, Mr. Guerrieri, discussed this case? I will start with that.

A. Before we—before he's been sentenced, before I've been sentenced, we have.

Q. In any event, you did discuss the case. Did you go over this case? And I am specifically concerned with this case, no other case. Did you go over the details together—[fol. 823] A. Oh, yes.

Q. —on the case?

A. Yes.

Q. How many times have you done that?

A. A few times.

Q. Was that before— Pardon?

A. We decided it was best for us.

Q. That is right. Now, through any conversation with your brother-in-law, Bennie, have you become convinced, from talking to him, that your testimony here in this court may or may not jeopardize his future well-being?

A. No.

Mr. Parsons: I would like to note an objection to that question.

The Court: Objection overruled.

Mr. Koutoulakos: He said, "no." I believe he said, "no."
All right.

By Mr. Koutoulakos:

Q. Now, getting back to this statement, what time was it, Christ, that you all left to go to the Base, do you recall?

A. As close as I can recall, it was between eleven and [fol. 824] twelve.

Q. Do you say that as a guess, or because you fix the time by—could it have been earlier?

A. It might have; it might have been later.

Q. Where did you leave from? Was it the Milanovich home?

A. Yes, sir.

Q. And on this ill-fated trip, who accompanied you to the Base?

A. It was me, Bennie, Grimmer, Virginia and Mike.

Q. Now, there will be no doubt about that in your mind?

A. Yes.

Q. And who was driving?

A. I believe it was Mike.

Q. You believe it was Mike, all right. And where were you seated?

A. That I couldn't tell you.

Q. Pardon?

A. Offhand, I couldn't tell you.

Q. You remember that Mike was driving?

A. Oh, yes.

Q. How about Bennie, where was he seated?

A. I couldn't tell you that.

Q. Let's see. Grimmer, where was Grimmer, if you know, [fol. 825] seated?

A. He was in the car with us.

Q. I know. But do you recall whether it was in the front or back?

A. No, I couldn't.

Q. All right, fine. This is approximately between 10:30, eleven, somewhere in that vicinity, would that be right?

A. Well, it might have been later. I don't know. I'm just giving you a guess.

Q. Was it before midnight?

A. I was trying to tell you, it was close to midnight.

Q. Well, you just told us—let me be specific here.

A. Between eleven and twelve.

Q. Between eleven and twelve. If you are not certain, why do you pick that time?

A. Well; I mean it was kind of late. It was late.

Q. How do you fix the time as being late, because it was dark?

A. No, because it was between—around twelve o'clock, something or other.

Q. Now, you say it was between twelve o'clock. Was it twelve or wasn't it?

[fol. 826] Mr. Parsons: If your Honor please, he has been over this thing repeatedly.

The Court: He said between eleven and twelve.

Mr. Koutoulakos: He said between eleven and twelve.

Mr. Parsons: He said between eleven and twelve. He said it could have been earlier, and he has gone back again—

The Court: The answer is, he does not know.

Mr. Koutoulakos: That is what I think he should say.

The Court: He said his best estimate was between eleven and twelve. It may have been earlier; it may have been later.

By Mr. Koutoulakos:

Q. Now, when you gave this statement to the F. B. I.—and I will show you this statement, if you are uncertain about the time—why did you specify here, "At about 10:30 p.m."—if you will read that, I think that is exactly what it says, about 10:30 p.m.—if you are now uncertain of the time?

A. Well, that's what I'm trying to tell you—I don't know the exact time. I am just stating, I could have said 10:00 [fol. 827] p.m., but, offhand, I really don't know.

Q. Now, Christ, you also told us that it was Virginia and Millie that picked you up, not Virginia and Mike.

A. Virginia and Millie, yes.

Q. Weren't you given a copy of this statement to refresh your recollection so that you could come to testify? Did you see a copy of this the last couple of days?

A. I don't know if that's the same one.

Q. Well, were you given a copy of the statement you gave?

A. Well, I gave them a statement. I didn't give them much of a statement.

Q. You do not call this much of a statement?

A. No.

Q. But, in any event, this statement you gave them—and I will give it to you and let you look at it, and ask you whether or not you were given a copy of this and asked whether or not that refreshed your recollection? Do you recall seeing such a statement in the past few days? Did you look at that statement?

A. I don't recall if this is the same statement.

Q. Well now, you can tell by the language that is in there, can you not, as to whether or not you refreshed your recollection with that statement?

[fol. 828] A. Yes.

Q. Well, isn't that the same statement?

A. Yes.

Q. All right. So then you had refreshed your recollection and you knew the time that was stated in that statement as you also knew that you had mentioned Virginia and Mike and now you are telling this Court you do not know what time it was and also it was Virginia and Millie.

A. That's correct.

Q. You are sure about Millie too?

A. Yes.

Q. All right. Let me refresh your recollection on another statement you gave to the F. B. I.

Mr. Parsons: I think it would be pertinent to ask him when and what time he saw this statement since it was taken. It is not a signed statement, I believe.

By Mr. Koutoulakos:

Q. You were shown this in the past couple of days, weren't you?

A. I don't know if that's the same one.

Mr. Koutoulakos: Does he have any other statement?

Mr. Parsons: You have them all.

Mr. Koutoulakos: Well, if I have them all, you know it [fol. 829] is the same statement, then.

Mr. Parsons: I do not know what he was shown.

By Mr. Koutoulakos:

Q. You read it, Christ?

A. I didn't read it. I just read a fraction. I didn't read the whole thing.

Q. Well, the fraction you read, didn't the part in it that said Virginia and Mike—

A. I was trying to look—or I was trying to read, but I couldn't find it.

Q. Didn't this statement that you read make reference to the fact that Virginia and Mike picked you up after the Amphibious Base job?

A. No—on the statement it is, but—

Q. I am talking about the statement that you gave to the F. B. I. that you read to refresh your recollection?

A. Yes.

Q. So then it has to be this statement, or are you saying now that you gave an additional statement to the F. B. I. that is not here?

A. No.

Mr. Parsons: You have that one too, Mr. Koutoulakos.

Mr. Koutoulakos: There is another one on Millie. We [fol. 830] will get to that.

By Mr. Koutoulakos:

Q. Now, there can be no question in your mind now that Millie was involved; is that right?

A. Pardon me?

Q. Millie.

A. She picked us up.

Q. You are telling—

A. She picked us up.

Q. Not Mike?

A. That's right.

Q. But in your statement, when you first talked to the F. B. I., you said Mike?

A. Well, at first I told you it wasn't much of a statement that I give them.

Q. Let me read this statement to you and put it in the record.

Mr. Parsons: If your Honor please, it is perfectly proper to use this statement for cross-examination, but it is definitely not part of the record and it cannot be used as such.

The Court: Objection sustained as to that.

[fol. 831] Mr. Koutoulakos: Well, I want to read it to him.

The Court: You may ask him, did he make such and such a statement, and then if he says, no, and you care to put the agent, or whoever it is, on the stand to contradict him, you are at liberty to do so.

Mr. Koutoulakos: All right.

By Mr. Koutoulakos:

Q. You heard the Judge. Look at this statement and just tell us whether you made it.

A. That is the statement.

Q. Well, you have been saying you do not know it is and now you know it is? Just make up your mind, whether it is or it isn't.

Mr. Parsons: Your Honor, he said repeatedly it was his statement. He did not say it was not.

By Mr. Koutoulakos:

Q. And that was the statement you were given to refresh your recollection?

A. That's right.

Q. And in that statement—just tell us when you last saw it.

A. Oh, it might have been a few days ago.

Q. A few days ago. And you read the contents in there?

[fol. 832] A. I didn't read it all.

Q. What part did you read?

A. That's what I was trying to look for. I couldn't find it.

Q. What was the reason that statement was given to you?

A. Pardon?

Q. Why was that statement given to you?

A. No reason. I just asked for it to let me look at it.

Q. To refresh your recollection?

A. That right.

Q. Now, I invite your attention to a statement that says, "On October 6, 1958, Christ Sofocleous was interviewed concerning Millie Gauger's participation—"—

Mr. Parsons: Ask him a question. Do not read it.

By Mr. Koutoulakos:

Q. Do you want to look at that and see whether or not it is your statement or what you told this—I think it is F. B. I. Agent Stanley Peterson—first paragraph?

A. This is the statement.

Q. In that statement do you say that Millie is involved in this case?

[fol. 833] A. No.

Q. You deny it?

A. At the time, yes.

Q. That is right. Well, are you telling the truth now or then?

A. I'm telling the truth now.

Q. Not then?

A. That's right.

Q. In other words, you were lying to the F. B. I. then?

A. That's right.

Mr. Parsons: If your Honor please, I know what appears to be in that statement and I think that it (sic) a misconception of the facts there. He is questioning about whether Millie and Virginia picked them up, and in that particular statement there is nothing about who picked them up. It says that Millie was not involved in the burglary, nor was in the car at the time they left the Milanovich home. It does not say anything about who picked them up.

By Mr. Koutoulakos:

Q. "Sofocleous was then questioned as to Gauger's participation as a lookout in the Milanovich car and he stated [fol. 834] he could not recall Gauger in the car;" isn't that what you said?

A. That's what I said.

Q. Do you want to read it?

Mr. Parsons: That is not in contradiction of anything he said previously.

Mr. Koutoulakos: Well, I disagree with you very much, then.

The Court: You gentlemen can argue that to the jury later on. I suppose you are going to insist on argument.

By Mr. Koutoulakos:

Q. Then when you gave them this statement, and I will read it, "He was questioned as to whether or not Gauger participated in any discussions at the Milanovich home regarding the burglary and prior to the burglary, and he stated that he did not know as he, himself, did not participate in such discussions," you had no discussions at all about any burglary then?

A. That's right.

Q. With the Milanoviches?

A. That's right.

Q. "Sofocleous was then questioned as to Gauger's participation as a lookout in the Milanovich car and he stated he could not recall Gauger in the car." Now, I will read [fol. 835] again and continue, "On October 27, 1958, Sofocleous was recontacted and he stated that he cannot recall Gauger present in the Milanovich car or Mike and Virginia Milanovich in the car when he and Grimmer and Guerrieri left in the Milanovich car to enter the building they were to eventually burglarize, and he stated he did not share in the money obtained from the burglary and that he has no way of knowing Gauger's participation in the burglary or what amount of money she received—"—

The Court: Now you are reading the report into evidence, which is just what I said you could not do.

Mr. Koutoulakos: I am sorry. I was reading it to him.
The Court: He can read. Show it to him.

By Mr. Koutoulakos:

Q. All right, read it, in the second paragraph—

A. I did read it.

Q. There is a question in your mind about Virginia, Mike and Millie; is that not right? Now, Christ, I want to ask you again, who was it that went to this Amphibious Base when you first went to conduct the robbery?

A. It was me, Grimmer—

Q. Yes.

A. —Guerrieri—

[fol. 836] Q. Yes.

A. —Virginia and Mike.

Q. I want you to look at another statement you gave to the F. B. I. and see whether or not that is a statement that you gave them. Does that refresh your recollection?

A. That's the statement.

Q. And what do you say in that statement as to who was present when you went to the Amphibious Base?

A. Everyone but Millie.

Q. Read it again.

Mr. Parsons: Sorry, I did not hear what he said.

Mr. Koutoulakos: He said, "Everyone but Millie."

By Mr. Koutoulakos:

Q. "On August 1, 1958, Christ Sofocleous was interviewed and he advised that, on the night of June 1st Mike and Virginia Milinovich, Millie Gauger, Ben Guerrieri, Clayton Grimmer and himself all went to the Little Creek Amphibious Base—"

Mr. Parsons: If he is attempting to contradict him, that is what the witness testified to three times on cross-examination. I do not see any contradiction there.

Mr. Koutoulakos: Your Honor, maybe I am not hearing [fol. 837]. the same thing. He said Millie was not along. That statement says that she was.

The Court: Well, you gentlemen can argue that to the jury later.

Mr. Koutoulakos: Your Honor, I do not like his inferences. That is a direct contradiction of what he has testified to.

The Court: I say, you can argue it to the jury.

Mr. Koutoulakos: All right.

By Mr. Koutoulakos:

Q. This statement given to the F. B. I. unequivocally has Millie in it?

A. Yes.

Q. And Clayton and Mike and Virginia?

A. (No response).

Q. Now, were you interviewed by the F. B. I. on June 24, 1958, regarding your participation in this case?

A. I don't recall the date.

Q. Well, were you, sometime in June—I know the date may be—do you recall the reason that you gave for being down here at that time?

A. I was down on vacation.

Q. Did you admit participation in the case then?

[fol. 838] A. Did I what?

Q. Did you admit that you were involved in this?

A. Yes, sir.

Q. Do you want to read the third paragraph of this statement and refresh your recollection a little further?

The Court: The witness has read it.

By Mr. Koutoulakos:

Q. Did you admit it?

A. Pardon me?

Q. Did you admit that you were involved?

A. Yes, sir.

Q. All right. "Sofocleous was questioned regarding the burglary of the Commissary Store, Little Creek Amphibious Base, Virginia, June 2, 1958, and he stated he knew nothing about the burglary whatsoever and nothing was discussed in his presence and did not know anything regarding the

burglary until he read in the newspapers that Grimmer was arrested, together with Mike Milanovich, followed by the arrest of Guerrieri."

A. At the time, yes, that's the statement I gave them.

Q. Well then, you denied any participation?

A. I pleaded guilty too, so I had—

Q. I am not asking you that. You denied any participation on this occasion, when you were questioned by the [fol. 839] F. B. I., regarding your participation?

A. Yes, sir.

Q. Now, how long did you stay here after you arrived in June, if you know?

A. Maybe a week or better.

Q. Then did you return back to Youngstown?

A. Yes, sir.

Q. Mr. Sofocleous, can you tell us, for our benefit, when, after that statement, wherein you denied your participation, you did decide—

A. Which statement was that?

Q. The one that I read to you about you denying any knowledge about the job until you read it in the paper.

A. That might have been first when I was picked up.

Q. That may have been when you were first picked up?

A. It might have been.

Q. How long was it after that that you pleaded guilty?

A. I don't recall.

Q. Between the time you pleaded guilty and the time you gave this statement—

A. I don't recall.

Q. Just listen to my question now—did you and Mr. Guerrieri get together and discuss this case?

[fol. 840] A. I told you at the time we did, before we—before we were sentenced, or anything.

Q. Do you recall about what time it was in the morning after this job was completed that you got off the Base? Could you give us an estimate?

A. I don't recall what time, but it was daybreak.

Q. Quite late, five, six o'clock?

A. I don't recall the time.

Q. It was daylight?

A. It was getting light.

Q. And this was in the summer?

A. Yes.

Q. Daybreak would be what, do you have any idea?

A. I couldn't tell.

Q. Was the sun out, to your knowledge?

A. Well, I mean it was getting daybreak. If the sun comes out then, I don't know.

Q. As I understand it, there were some tools purchased when you all were down here?

A. Yes, sir.

Q. Who purchased them?

A. Well, it was me, Bennie, Mike.

Q. You are sure Mike was along?

A. Yes.

Q. What tools are you talking about?

[fol. 841] A. The tools that were on the job.

Q. Just specify them, if you know.

A. Well, I couldn't tell you what kind of tools they were.

Q. How about an oxygen tank, was Mike along then? That was a tool.

A. I don't know. I didn't buy an oxygen tank.

Q. Didn't that man identify you in court today?

A. Pardon me?

Q. Didn't that man identify you in court here today?

A. Yes, sir.

Mr. Parsons: I do not think he knew what he was here to identify him for, frankly.

Mr. Koutoulakos: We are not going to mislead the jury.

Mr. Parsons: Do not mislead the witness either.

Mr. Koutoulakos: I am not misleading him.

Mr. Parsons: He was identified twice.

By Mr. Koutoulakos:

Q. You were identified as the man that bought that tank, do you want to deny that?

A. Yes, sir, I didn't buy no tank.

Q. And I want to be fair again. He testified that he [fol. 842] identified you.

A. I did not buy no tank.

Q. You did not buy a tank?

A. No.

Q. Well then, that man, who testified, was not telling the truth?

A. Well, maybe he wasn't.

Q. And you did not buy the tank?

A. No, I bought other tools.

Q. You do recall being brought into the courtroom for the identification?

A. Pardon me?

Q. You do recall being brought into the courtroom?

A. Yes, sir.

Q. Then if you did not buy that, how do you know who was along, if you were not there?

A. Pardon me?

Q. You say you did not go there when a cylinder was purchased?

A. I went along with them when they went and bought tools, but not at the time they bought the tank.

Q. Do you know what date it was when you came here?

A. I don't know.

Q. Was it in June?

[fol. 843] A. I couldn't tell you?

Q. Do you know if you were here in May?

A. I couldn't tell you.

Q. Do you have the evidence of your plane—

A. I guess they have the ticket.

Mr. Parsons: The plane tickets are in evidence, if you care to see them. I do not know the exhibit, but I believe they are in.

The Clerk: I do not believe the tickets are in. The stubs are.

By Mr. Koutoulakos:

Q. What name did you use, do you remember?

A. Christopher.

Q. I want to be fair. This one does not have your name. This was not it. All right.

The Court: The only plane tickets that are in evidence, Mr. Parsons, are the tickets in the name of Sherbundy and Harrell—

Mr. Koutoulakos: That is right.

The Court: —on one ticket dated June 3, 1958, and a ticket in the name of Christopher, dated June 3, 1958, both of those trips were Norfolk to Youngstown with stopoffs, [fol. 844] and so on. Those are the only tickets that are in evidence; isn't that true?

Mr. Koutoulakos: That is what I understand.

By Mr. Koutoulakos:

Q. Well, that June 3rd would be your return trip, I take it, going back?

A. Pardon me?

Q. I take it the June 3rd trip would be your going back?

A. Yes, sir.

Q. You do not know when it was that you got here?

A. No.

The Court: There was evidence by the lady who testified, but there was an objection to that evidence. That ticket was excluded, to my recollection.

By Mr. Koutoulakos:

Q. Now, Christ, do you know whether or not any more statements have been given by you other than those you have been confronted with?

A. I wouldn't know.

Q. You just do not know?

A. No.

[fol. 845] Q. Do you want to write the name Mike down several times?

A. Pardon me?

Q. Mike, just write it on there four, five or six times.

Mr. Parsons: I do not have any objection to his signing it. I would like to know why, because I see nothing in the evidence that has a thing to do with it.

Mr. Koutoulakos: At the proper time—

The Court: It may be connected up. I do not know.

Mr. Koutoulakos: Could I have Exhibit 41, please.

By Mr. Koutoulakos:

Q. I want you (sic) show you something, Christ, and ask you whether or not you have seen this before? Take a look at that ticket. Just hold it and look at it.

The Court: The question is, have you ever seen it before?

A. I don't recall seeing it, sir.

The Court: He does not recall seeing it.

[fol. 846] By Mr. Koutoulakos:

Q. Do you recall ever signing such an instrument?

A. No, I don't.

Q. Now then, you did not go along when this purchase was made, assuming there was a purchase?

A. Which purchase?

Q. Of an oxygen cylinder.

A. That's right.

Q. Definitely, you were not along?

A. That's right.

Q. No question about it?

A. Right.

Q. Who was it that went to purchase the cylinder, if you know now?

A. I couldn't tell you.

Q. And you do not even know if a cylinder was purchased?

A. That's right.

Q. Now, did you bring any equipment down from Cleveland?

A. No, sir.

Q. Do you know what was brought down by Bennie and Clay?

A. No, sir.

Q. You do not have any idea?

[fol. 847] A. (Witness shakes head)

The Court: Do you wish to present, for identification, the signatures, the writing of the word "Mike" by this witness?

Mr. Koutoulakos: I want it marked for identification.

The Court: Let it be marked Defendant's Exhibit No. 3 for identification.

(The samples of handwriting written by Christ Sofocleous were marked as Defendant's Exhibit No. 3 for identification.)

Mr. Koutoulakos: Your Honor, what I was doing, frankly, there is a name "Mike" that appears on the bottom when the cylinder was taken. I was under the impression that it was Mike Milanovich. I am now told that Mike was the name of the salesman, so I will withdraw this. Keep it out.

Mr. Parsons: Mr. Flanigan, according to my records, is known as Mike.

Mr. Koutoulakos: We did not know who the Mike was.

The Court: If we had known that a long time ago, I think we would have saved about two hours.

[fol. 848] Mr. Koutoulakos: Yes, sir, I'm sorry, because we just found it out. Thank you. That is all we have.

The Court: Anything further, Mr. Parsons, of this witness?

Mr. Parsons: No further questions from the Government, your Honor.

The Court: Is he to be excused?

Mr. Parsons: I would like for him to remain, your Honor.

The Court: All right. Just make yourself comfortable out there.

The Clerk: Mr. Koutoulakos, you have one of those exhibits marked for identification.

Mr. Koutoulakos: What is that?

The Clerk: Do you want to ask the Court to withdraw both of them?

Mr. Koutoulakos: Yes, I would like to ask the Court to withdraw them.

The Court: Withdraw both Defendant's Exhibit 2 and 3 [fol. 849] for identification for the reason that apparently the word "Mike" was the name of the salesman.

Mr. Koutoulakos: Yes, sir.

CLAYTON T. GRIMMER, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Grimmer, would you speak loud enough so that these gentlemen can hear you while I ask you these questions, sir. Will you state your name.

A. Clayton Thomas Grimmer.

Q. Where is your home?

A. Youngstown, Ohio.

Q. I believe you, sir, were indicted and pleaded guilty to certain charges involving the theft at the Naval Air Station Exchange and the Naval Amphibious Base Commissary Store; that is correct?

A. I did, sir.

The Court: Isn't it more accurate to say that he waived indictment and was proceeded against by criminal information?

[fol. 850] Mr. Parsons: Your Honor, you may be correct on that. I am not sure. I believe that is correct. I do not recall offhand.

By Mr. Parsons:

Q. Did you participate in the robbery at the Naval Exchange?

A. Yes, sir, I did.

Q. And did you participate in the Commissary Store robbery at Little Creek?

A. Yes, sir, I did.

Q. Who participated in those robberies with you, sir?

A. Ben Guerrieri, Christ—the first job?

Q. All right, sir, at the Naval Air Exchange.

A. Myself, Ben Guerrieri, Virginia Milanovich, Mike Milanovich. That's it.

Q. All right, sir. At the Amphibious Base, who participated in that robbery with you?

A. Myself, Ben Guerrieri, Mike Milanovich, Virginia Milanovich. How many did I name?

Q. Four, I believe. You named yourself, Guerrieri, Virginia Milanovich and Mike Milanovich.

A. And Christ Sofocleous.

Mr. Parsons: Answer any questions counsel might have.

[fol. 851] Mr. Koutoulakos: Are you finished with him?

Mr. Parsons: Yes, sir.

Mr. Koutoulakos: Your Honor, I understand he has several statements, so I will start with what I have and make myself familiar with the matter.

The Court: All right.

Cross examination.

By Mr. Koutoulakos:

Q. Let's see. Your name is Clayton Grimmer; is that correct?

A. That is correct.

Q. Are you known by any other name or is that the only name you go by?

A. That's the only name I go by.

Q. Where do you live, Mr. Grimmer?

A. Youngstown, Ohio.

Q. If you remove the gum, I think these folks can hear you better.

A. Pardon. Go ahead.

Q. Now, inviting your attention to, I believe, the first robbery, what date was that, if you know?

[fol. 852] A. I do not remember, sir.

Q. You do not remember—

A. No, sir.

Q. —at all? Was it sometime in April?

A. I do not remember distinctly, but I believe it was in May.

Q. And could you get a little closer to it? May when?

A. I don't remember the exact date.

Q. Do you remember the day of the week?

A. No, sir, I do not.

Q. Do you remember if it was a weekend or a weekday?

A. I do not remember that.

Q. You do not remember that either?

A. No, sir.

Q. There came a time when you were arrested; is that correct?

A. Yes, sir.

Q. After you were arrested, you were taken to the local jail, as I understand it; is that correct?

A. That is correct.

Q. At that time, the first time you were arrested, did you have occasion to make any statement to any agents of the Federal Bureau of Investigation regarding your participation in this case?

[fol. 853] A. Do you mean did I admit a statement?

Q. I am asking you whether or not you made any statement. Whether you admitted it or denied it, just give us the statement, if you recall, oral or written.

A. To the effect of the robbery?

Q. Yes, and I am concerned with the first one at this time.

A. I did not make a statement at that time, I don't believe.

Q. When you say you did not make a statement, you mean by that you did not talk to them or you denied participation, so we will know what you are talking about?

A. Well, at first, I denied any part of it and—

Q. All right. Now, first you denied any part of it?

A. Yes, sir.

Q. How soon after that was it that you admitted complicity or participation in this crime?

A. Approximately a week or a week and a half.

Q. One week or one week and a half?

A. Roughly.

Q. After your arrest, is that—if you are not clear, say so—that would be a week or a week and a half after you were arrested and taken to the local jail and admitted you were involved?

[fol. 854] A. Roughly, yes, sir.

Q. Do you recall about when it was that you were arrested?

A. I believe it was June 17th.

Q. June 17th?

A. I wouldn't swear to the date, but I believe it was June 17th.

Q. What agent or what authority was it that actually effected your arrest, do you know?

A. What do you mean by "effect", sir?

Q. Who was it that actually told you you were under arrest?

A. I don't distinctly remember the agent's name. I found out, when I came up for hearing, they were placing me under a \$5,000.00 bond for participation in the Naval Air Station robbery.

Q. When you were first placed under arrest and taken to the station, was your wife in this area at that time?

A. No, sir.

Q. Did there come a time when she did come here to visit you?

A. She came around to the jail later on to visit me.

Q. Do you know when that was and with relation to when you decided to admit you were involved, was it before [fol. 855] or after?

A. I do not remember, sir.

Q. You do not recall whether or not she came here to see you before you decided to admit your guilt in this case?

A. I do not remember distinctly, no, sir.

Q. Were you placed in the Norfolk jail?

A. Yes, sir.

Q. Do you know how long you remained there pending the outcome of the case?

A. It's quite a while.

Q. Do you have any idea about when it was when you were removed and sent to the penitentiary?

A. Roughly, I'd say about a month and a half.

Q. About a month and a half?

A. Yes, sir, roughly.

Q. We are just estimating. You remained there then from June 17th until either the end of July or early August; would that be about right?

A. About right, yes, sir.

Q. Did there come a time when you gave a statement or, for that matter, several statements—I do not know—to the agents or various people—authorities—who were investigating this case.

A. I did give a statement later on, yes, sir, after I was arrested.

[fol. 856] Q. There came a time subsequently, as I understand it, that you sent a letter from the Atlanta Peniten-

tiary to Mr. and Mrs. Milanovich and, as I further understand it, a copy to the District Attorney, dated November 5, 1958; is that correct?

A. That is correct, sir.

Q. And in that statement you state, in effect, that these people are innocent; is that correct? Just answer my question.

A. Would you ask it over, please?

Mr. Koutoulakos: Will you read it back?

(The pending question was read by the reporter.)

A. In that statement I wrote that sentence.

By Mr. Koutoulakos:

Q. That is Mike and Virginia Milanovich?

A. Yes, sir.

Q. And in that statement—

A. You are referring to the one from Atlanta?

Q. Well, you did not send it to me. Here, take a look at it and see if this is the statement.

A. Yes, sir.

Q. That statement was certainly not solicited by me: [fol. 857] is that correct?

A. That is correct.

Q. I did not ask you for it. As a matter of fact, I never saw you before in my life.

A. That's right.

Mr. Parsons: Of course, if your Honor please, that is improper questioning. I do not see any purpose to it.

The Court: There has been no suggestion that Mr. Koutoulakos did solicit it.

Mr. Parsons: None at all.

The Court: Nor any suggestion that anybody in this courtroom did.

Mr. Koutoulakos: Thank you, your Honor.

The Court: Mr. Grimmer can state why he wrote it, if he wants to.

By Mr. Koutoulakos:

Q. In this statement you also state that there were some tools you had stolen from the Milanovich home; is that correct?

A. I did put that in the statement.

Q. And you also stated in that statement that the funnel that was used was stolen by you from the Milanovich's home.

[fol. 858] A. That is also in the statement.

Q. And you also stated that the reason you implicated them was because you expected some sort of favoritism from the F. B. I. with respect to a sentence; is that correct?

A. When the letter was written, I believe that was in there.

Q. Well, not believed. Do you want to look at it and see whether it was in there or not?

A. It could be. That is correct, sir, I did place it in the statement.

Q. You put that in?

A. Yes, sir.

Q. And you also put in there a statement to the effect, and you quoted—the statement you quoted was to the effect—and I assume the F. B. I., but at least somebody—"We have been after her for a long time and would certainly like to get her a lot of time." You put that in the statement; is that not correct?

A. Yes, sir, that was in the statement.

Q. And you also put in the statement that you were allowed some visits because of the fact that you were co-operating; is that correct?

A. That is also in the statement.

Q. And you also put in the statement that at no time [fol. 859] were you under oath when you gave any statements to the F. B. I. implicating Virginia and Mike Milanovich?

A. When I wrote the statement, that's in there.

Q. Including when you appeared before a Grand Jury, you stated you were not under oath, in the statement?

A. In the statement, yes, sir.

Q. And if you had been under oath, you would not have implicated these people?

A. I beg your pardon, sir?

Q. I say, if you had been under oath, according to your statement, you would not have implicated them; is that your statement?

A. I don't remember that, sir. Could I see that?

Q. "Had I have been under oath my testimony would have not implicated Mike or Virginia Milanovich."

A. All right.

Q. Then, from your statement, apparently, it makes a difference to you whether you tell the truth or not, whether you are under oath or not; is that right?

A. Yes, sir, it does.

Q. Now, with respect to the two robberies—the first robbery, we will start with that—do you recall what time it was when you left to go to the Air Station? And I am talking about the Naval Air Station—

A. Yes, sir.

[fol. 860] Q. —Exchange now.

A. I won't say exactly.

Q. Just give us an estimate.

A. I would say roughly around midnight.

Q. Roughly about midnight?

A. Yes, sir.

Q. You are definite on that now?

A. No, I am not definite.

Q. Would that be your best guess, close?

A. Guessing, I would say it was around midnight.

Q. And to be fair with you and honest with you, it is my understanding that this robbery was perpetrated sometime either late on the 16th or early morning on the 17th, sometime in there, of May, so you will be familiar with the day.

A. What do you mean by "perpetrated", sir?

Q. Just what you did is what I mean by "perpetrated". You went over there and helped clean out the safe?

A. Yes, sir.

Q. About the 17th, in the morning.

The Court: He is giving you the dates, Mr. Grimmer, either the late part or the night of May 16th or the early part of May 17th. That is the only purpose of his statement.

{fol. 861] Mr. Koutoulakos: That is right, so you will be familiar with the date.

The Court: So you will know the dates. We appreciate the fact that you do not remember the dates, but the Air Station robbery.

The Witness: Yes, sir.

The Court: Was the late part of May 16th, either at midnight or just a few minutes before, or the early part of May 17th, going into the morning of May 17th.

The Witness: Yes, sir.

By Mr. Koutoulakos:

Q. With whom did you travel or proceed to the Naval Exchange?

A. With whom?

Q. Yes.

A. Ben Guerrieri, Mike Milanovich and Virginia Milanovich.

Q. Was there anybody else present?

A. I don't remember, sir.

Q. Is that because there was or was not?

A. I don't remember, sir.

Q. Could there have been and you forget?

[fol. 862] A. There could have been.

Q. Well now, this was an important mission you were on: is that not correct? You were going to purloin the Naval Exchange?

A. It depends on what you call important, sir.

Q. Was that not—

Mr. Parsons: If your Honor please, I do not think it is necessary for him to testify. He has already admitted he stole the money, but I do not think Mr. Koutoulakos should testify.

Mr. Koutoulakos: I am trying to refresh his recollection.

By Mr. Koutoulakos:

Q. But, in any event, you do not recall whether anybody else was there or not?

A. No, sir, I don't remember.

Q. When you arrived there, where did Ben and you get off, if you got out of the car?

A. Near the Naval Air Station.

Q. When you say "near", can you tell us more in detail and be more specific just where it was?

A. It was near the Exchange. Where, I can't say.

Q. Was it inside or outside the gate?

A. It was inside the gate, sir.

[fol. 863] Q. Then, I take it that you went through the gate with the car?

A. Yes, sir.

Q. Were you stopped at the gate on the late 16th or early 17th?

A. I do not remember if we were stopped, sir.

Q. Do you know whether or not you went through a gate?

A. Yes, sir.

Q. Do you know whether or not there was a sentry there?

A. I presume there was, sir.

Q. You know there is one there all the time?

A. No, sir, I don't know there is one there all the time.

Mr. Parsons: If your Honor please, this is testimony by Mr. Koutoulakos.

Mr. Koutoulakos: I do not think it is testimony. I think Mr. Parsons knows there is one there all the time.

Mr. Parsons: I know?

By Mr. Koutoulakos:

Q. You know for a fact there is a sentry at the gate at all times, twenty-four hours a day?

A. There is supposed to be.

[fol. 864] Q. Not supposed to be. I say, do you know or don't you know?

A. I don't know what orders they give there.

The Court: He said he presumed, Mr. Koutoulakos, and that is about as far as he can go.

By Mr. Koutoulakos:

Q. In any event, do you recall whether or not your vehicle or, at least the vehicle you were in, was stopped by any sentry?

A. I do not remember, sir.

Q. Where were you seated in the car?

A. I think I was seated in the back seat.

Q. When you say you think, is there a doubt in your mind?

A. I am not sure I was in the front seat or back seat. I do know I was in the car. As to the front or back, I can't remember.

Q. Do you know where Bennie was seated?

A. No, sir. He was in the car.

Q. And where was Mike?

A. I think he was driving.

Q. That would put him behind the driver's seat?

A. Yes, sir, definitely.

Q. And where was Virginia?

[fol. 865] A. In the car.

Q. Do you have any idea whether that was front or back?

A. I think she was in the front.

Q. Was there anybody else or anything else in the car at that time?

A. A bag of tools.

Q. Is that the only thing, a bag of tools?

A. As to what else was in the car, sir, the car didn't belong to me and I don't—

Q. No, I am talking about human beings or tools or animals.

A. I don't think there were any animals present.

Q. The tools that you are referring to, specifically what kind of tools were they?

A. Crowbar, and so forth.

Q. A crowbar?

A. Yes, sir.

Q. And what else?

A. Well, I think there was a screwdriver.

Q. Wait, let me list them. Crowbar. Was that one crowbar?

A. Sir?

Q. Was that one crowbar?

A. I do not remember, sir, if it was one. I do know [fol. 866] there was a gang of tools. I don't remember distinctly each and every piece of them.

Q. Well, you used them?

A. Yes, sir.

Q. There is no question about that?

A. Yes, sir.

Q. Were you the man that was familiar with breaking open that safe or was it Bennie?

A. As to that, I couldn't say, sir. Both of us did it.

Q. You were there, weren't you?

A. Yes, sir.

Q. You were not drunk, were you?

A. Not at all, sir.

Mr. Parsons: He said both of them did it, Mr. Koutoulakos.

Mr. Koutoulakos: I want to know what he did, Mr. Parsons, and that is what I am asking.

The Court: All right, gentlemen.

By Mr. Koutoulakos:

Q. Now, just who is the safe man, you or Bennie? You can tell us that, I am sure.

A. Well, if you mean is his profession a safe-cracker—

Q. Yes.

[fol. 867] A. —that I can't say.

Q. How about your profession?

A. As I say, both us worked on the safe, both of us ripped it.

Q. What did you do?

A. I assisted him.

Q. Doing what? What did you do specifically?

A. Well, both of us tore the door off.

Q. I am talking about what you did. Now, tell us what you did.

A. I do not remember distinctly, sir, what I did.

Q. You do not recall what you did?

A. Not distinctly. I do know we tore the door off.

Q. Well, you didn't do it with your hands, I am sure?

A. Definitely not.

Q. All right. Just tell us what tools you used and your participation.

A. Well, the tools used was the bag I've just described, and I said a minute ago it was a bag of tools. Each and every tool, I can't name.

Q. In any event, those were all of the tools that you had, what were in that bag; is that correct?

A. I think so, yes, sir.

Q. How did you gain entry to the Exchange Building—[fol. 868] not the gate now, but the building?

A. The building, I believe we caught a fire escape to the roof. From the roof, we went through a window that was open, through the theatre and down to the Post Exchange.

Q. Did you have to break through any part of the building to get to the point that you just described?

A. No, sir.

Q. Did you have to remove any doors or any glass or any windows?

A. Not to the point that I have just described.

Q. When you got to the point where you did, how did you gain entry from there into the establishment where the safe was?

A. There was a small panel of glass approximately this long (indicating) and this wide (indicating), which we bursted and the safe was right around the corner from there. So we just crawled in through the hole, put our tools in and got to the safe.

Q. Now, even by your own admission, certainly Mike was not in there with you and Bennie?

A. No, sir, he was not in the building.

Q. When you arrived at the building, did you see anything around the building—car, person, or anything else of that nature?

A. I don't remember, sir, what was around the building [fol. 869] or—there weren't any people around.

Q. Did you look around to see?

A. I presume you always look for people.

Q. Do not presume what I would do, because I would not hold up or rob the Exchange. Just tell us what you did.

Mr. Parsons: If your Honor please, this is argumentative.

Mr. Koutoulakos: It is not argument.

By Mr. Koutoulakos:

Q. Just tell us what you did. Did you look or didn't you look?

A. We looked for people.

Q. Did you see any people?

A. No, sir.

Q. Why don't you answer my questions when I put them to you?

A. I'm sorry, but if you put them in a straight form, I will.

Q. All right. If you do not understand it, ask me to repeat it.

The Court: All right, let's cut out the argument and ask the question.

By Mr. Koutoulakos:

Q. You did not see any people?

A. No, sir.

[fol. 870] Q. Did you see any automobiles?

A. I do not remember, sir.

Q. You do not remember any vehicles?

A. I just do not remember.

Q. Is that because there weren't any there or you just do not know?

A. There could have been some there, sir.

Q. Do you know what was immediately across the street from the Exchange Building?

A. Sir?

Q. Do you know what was immediately across the street from where the Exchange Building was?

A. I cannot say what was across there, no, sir.

Q. How long did your theft or this theft take place, until what time in the morning?

A. I do not remember exactly. I would say it had taken between two and a half to three hours, roughly.

Q. Assuming, then, that you started in the neighborhood of twelve o'clock, roughly—and I am not pinning you down

to the exact time, but in that vicinity, a little before, a little after—

A. That's right.

Q. —and you proceeded to the Air Base, how much time would you say it took to get to the Air Base?

A. I don't know, sir.

[fol. 871] Q. Ten, fifteen, twenty minutes, thirty minutes?

A. I'd say fifteen or twenty minutes, roughly.

Q. So roughly, then, approximately 12:15 or 12:20 you all arrived at the Base?

A. Yes, sir.

Q. How much time did it take, if you know, from the time you got to the Base—and when I say the Base, I am talking about the gate where you all got in—

A. Yes, sir.

Q. —now you do mean 12:15, 12:20, to the Exchange Building, so there will be no misunderstanding?

A. I do not remember the exact time.

Q. Well, my next question was—what I am trying to establish is how much time it took you actually from where you left to the Exchange Building.

A. That I wouldn't say definitely.

Q. Would that be fifteen or twenty minutes or more?

A. Roughly, yes, sir.

Q. That would be about right?

A. Roughly.

Q. Fine. When you arrived at the building, just where did the car go, the car that you were in?

A. As I said before, it dropped us off.

Q. It dropped you off where?

A. Near the Post Exchange.

[fol. 872] Q. That is inside the gate?

A. Yes, sir.

Q. How far from the Post Exchange?

A. I don't remember exactly, sir.

Q. Then, as I take it, the car did not drive you up to the Exchange Building itself?

A. Near the Exchange Building.

Q. When you say "near," not to the building itself—but you say near it; is that correct?

A. Yes, sir.

Q. How near? Point to a place here in this courtroom and give us an idea of what you mean by "near."

A. I don't know, sir. It happened five months ago, it's not too clear in my mind.

Q. You do not pilfer Naval Air Stations every day, I am sure. Just tell us how near—from there to the end of the courtroom right here, or just what you mean by "near."

A. I'd say half the distance between here and the back of the courtroom, approximately.

Q. So then approximately one-half the distance of this courtroom, from the witness stand to the middle of the courtroom?

A. Yes, sir.

Q. And the car got no closer?

A. I don't believe it did at that time.

Q. Then I assume—and correct me if I am wrong—that [fol. 873] you and Mr. Guerrieri got out?

A. Yes, sir.

Q. And you took your bag of tools with you?

A. Yes, sir.

Q. Would you describe that bag?

A. I believe it was a brown leather bag.

Q. A brown leather bag?

A. Satchel.

Q. Oh, I was going to say it was not this thing here now?

A. No, sir, that's mine.

Q. Do you see it here any place?

Mr. Parsons: Would you like to have the bag, Mr. Koutoulakos? Would you bring in the bag for him.

Mr. Koutoulakos: Yes, sir.

By Mr. Koutoulakos:

Q. That is where you and Ben got in, the way you say you got in, and got in to where the safe was; is that correct?

A. Yes, sir.

Q. Just tell us what you did in opening the safe? Did you have to hammer; did you have to beat? Just what did you two do?

A. Pried the top of the door open.

[fol. 874] Q. How did you do that?

A. Put a chisel in.

Q. And then what did you do?

A. Well, the safe door came out some.

Q. Well, because I am not familiar with safes—when you say it comes out, do you open it and it comes out a little bit; is that it?

A. You put the chisel in the top.

Q. All right, you put the chisel in the top.

A. Yes, sir.

Q. And then what did you do?

A. Well, you have a small opening after the chisel is inserted.

Q. All right.

A. All right. Then you proceed from there and just work it down and get your opening.

Q. The chisel does not work down by itself?

A. Definitely not.

Q. Just tell us how you are working it down. Are you hitting it with a hammer?

A. Certainly.

Q. Why don't you tell us that, how you got that safe open?

Mr. Parsons: Do not badger the witness.

[fol. 875] Mr. Koutoulakos: I am not badgering him.

Mr. Parsons: Just ask him the question and do not badger him.

Mr. Koutoulakos: I am not badgering him and he knows it.

By Mr. Koutoulakos:

Q. Just tell us how you opened that safe. I asked you that several times.

Mr. Parsons: He told you about four times.

Mr. Koutoulakos: He has not told us any such thing.

By Mr. Koutoulakos:

Q. Just tell us how you did it.

A. Well, as I said before, the chisel was inserted at the top and you naturally have more chisels, I believe, or screwdrivers or some instrument that can be inserted in the crack which you have just made by the first chisel.

Q. Is this a true copy of the safe where the door was open, is this the one that you are talking about?

A. It looks like it.

Q. How long did it take you to get this safe open?

A. I couldn't say for sure, sir, how much time it really [fol. 876] taken.

Q. Were you and Bennie—weren't you checking or have any system of checking the time as against the time somebody may show up in that building?

A. Well, we wasn't worried too much about that, sir.

Q. You were not worried about that?

A. I wouldn't say a great deal about it. Naturally, you keep a watchout and see if anybody comes around.

Q. But you and Bennie were not concerned about it—at least you were not.

A. I would say that I was concerned, but not a great deal.

Q. Do you have any idea about how long it took to crack this safe open?

A. No, sir, I do not.

Q. Now, in getting the chisel in there and in opening this door, as you have described, does it take much pounding?

A. Quite a bit, sir.

Q. Quite a bit?

A. Yes, sir.

Q. Did you have to use any other means of opening the door other than pounding with a chisel? I heard that glycerin may be used. I do not know. Did you have to use [fol. 877] that means of blowing this door open?

A. No, sir; no, sir.

Q. So it was purely by the hammer and chisel system?

A. Yes, sir, partly.

Q. Was a torch necessary?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. After the safe was opened, I take it you all went through the contents?

A: Yes, sir.

Q. And when you finally finished with that, did you go to any other safe or did you leave?

A. I think we put the money in a brown suitcase. It was mostly change, and the bills, I believe, we put in the satchel, but I'm not sure.

Q. Then when you say the "money", I take it that you mean the change—when you said the bills in the satchel, I take it that you put the change in a suitcase and the bills in a satchel; is that right?

A. I believe that's correct, sir.

Q. Was there a lot of silver there?

A. Quite a bit, sir.

Q. Could you estimate the weight of that silver, if you know?

[fol. 878] A. It was so heavy I couldn't carry it.

Q. You could not carry it?

A. No, sir.

Q. You are certain of that?

A. I could not carry it, but it was just too much for me, so I put it down.

Q. Would you say it was fifty to a hundred pounds?

A. As to the weight, sir, I couldn't say.

Q. You do not know?

A. I don't know.

Q. Did it fill up the bag? Is this the bag you are talking about? Is this the bag you are talking about?

A. Is that the one you are talking about, that the money was in?

Q. No, I am asking you, is this the bag you used that night to take your tools in?

A. I believe it was, sir.

Q. Well, don't you know definitely?

A. No, sir.

Q. Does it look like it?

A. I don't definitely know.

Q. You carried it; is that right, or was it Bennie?

A. I beg your pardon, sir?

Q. Did you carry this in or Bennie?

A. I don't remember if that bag was carried in, sir, or [fol. 879] brought out.

Q. Well, I do not want to mislead you because we do not know whether it is the bag or not, so I will withdraw it.

A. All right.

Q. Let me ask you this: Was it a leather bag or cloth bag?

A. I don't remember.

Q. You do not remember that either?

A. It was a bag, though.

Q. I believe you gave us a statement that it was two and a half hours for you to complete this job before you left the building?

A. I believe so.

Q. Is that a fair estimate of time?

A. I wouldn't swear that that was the time. Between two and a half hours. I wouldn't swear to it. I would say approximately that time.

Q. That is approximately two and a half to three hours?

A. Yes, sir.

Q. I take it now—this is the question I am asking you on this time—this is when you finished everything and were leaving the building?

A. Yes, sir.

[fol. 880] Q. About two and a half to three hours?

A. Yes, sir.

Q. How did you leave the building? What way did you use?

A. Same way we went in.

Q. Back out, exactly the same way you came in?

A. I wouldn't say exactly.

Q. Well, you said the same way. I take it to mean exactly. Now, if it is not the same, just tell us.

A. I told you I went through the window, through the theatre, down to the Post Exchange; that's the way we came out too.

Q. All right. Is that the same route you took when you left?

A. Yes, sir.

Q. And the tools, I take it, were left on the job?

A. I believe they were, yes, sir.

Q. Now, it is my further understanding that you were picked up by somebody; is that correct, in thinking that?

A. Yes, sir.

Q. Who picked you up?

A. Mike Milanovich, Virginia Milanovich.

Q. So that would have to be sometime in the neighborhood—let's see—you say 12:15 you got there, two and a half, three hours you were there, roughly 3:20, in that area? [fol. 881] A. I'd say somewhere around there. I don't know the time, sir. I wasn't always looking at the watch, understand.

Q. Well, did you have a watch with you?

A. I believe I did, yes, sir.

Q. But it was Mike and Virginia?

A. Yes, sir.

Q. And this is the morning of the 17th?

A. As to the morning, sir, I presume it was the 17th.

Q. All right. Now, you were working with these tools. You all weren't wiping them clean, I'm sure?

A. I believe they had been wiped clean previously.

Q. They had been wiped clean by whom?

A. I do not remember distinctly who wiped them clean.

Q. Did you wipe them clean? Let me put it that way.

A. I believe I assisted.

Q. And whom were you assisting?

A. I think Ben and I wiped both of them—the tools down.

Q. You wiped them, that is, before you actually went into the Exchange Building, is that right?

A. That's right.

[fol. 882] Q. Then, while you were using them, you were not wiping them then?

A. No, sir.

Q. You did not have to. You all were using gloves?

A. That is correct, sir.

Q. Did you have to buy any tools here in the vicinity of Norfolk after you arrived here?

A. I didn't, sir.

Q. You are certain of that fact?

A. I am quite sure.

Q. There is no question in your mind about it?

A. I am quite sure I didn't buy any tools.

Q. When you arrived here, Mr. Grimmer, whatever date it was, I do not know—

A. No, sir.

Q. —and you are not clear, where did you go, before the first—

A. You mean when we arrived here?

Q. Yes, before the first robbery was perpetrated.

A. We went to the home of Virginia Milanovich and Mike Milanovich.

Q. What was the purpose for that visit?

A. Which visit are you referring to, sir, the first time we came down?

Q. Well, my question was the first time you came here, [fol. 883] yes.

A. And you asked the purpose of that visit?

Q. Do you want to read that back to him?

The Court: That is correct, Mr. Grimmer. What was the purpose of your first visit to the Milanovich home?

A. I believe we came down with his brother, Steve Milanovich.

By Mr. Koutoulakos:

Q. You came down with Steve. That is you and Bennie and Steve?

A. Yes, sir.

Q. Do you know the reason why you came down here? Was it for a birthday party?

A. I do not remember distinctly, sir.

Q. You do not?

A. No, sir.

Q. Was it to rob the Naval Air Station?

A. I don't think it was, sir.

Q. Well, you ought to know, you came here. Was that what you had in mind?

A. I don't believe so, sir.

Mr. Parsons: He is arguing with the witness.

Mr. Koutoulakos: I was asking him what his purpose was in coming here.

[fol. 884] Mr. Parsons: Ask him. Do not argue with him.
Mr. Koutoulakos: You hear his answers.

By the Court:

Q. Is that what you came here for the first time, to rob the Naval Air Station?

A. As speaking exactly, I wouldn't say, sir.

By Mr. Koutoulakos:

Q. Well, speaking generally, did you have that in mind?

A. I don't believe so, sir.

Q. Why don't you say that? When you got here how long did you stay in the Milanovich home?

A. I do not remember, sir.

Q. Is that the only place you stayed, Mr. Grimmer?

A. I believe we stayed at a motel some place on the Military Highway. I'm not sure about it.

Q. Was that before or after you got to the Milanovich home?

A. That was on one trip down here.

Q. I am referring specifically to the first trip. Did you, at any time during that first trip, spend time in a motel?

A. I don't believe so, sir.

Q. You do not believe so?

[fol. 885] A. No, sir.

Q. So then your entire time, as I take it, when you first came here and for as long as you stayed here during that first visit, it was all spent in the Milanovich home; is that correct?

A. I believe so, sir.

Q. Not any place else?

A. That's right, sir.

Q. That means your whole stay in Norfolk now was all spent in the Milanovich home that first time?

A. I believe it was.

Q. And then you left to go to Youngstown, or I mean to Cleveland?

A. I beg your pardon, sir?

Q. Then you left here, did you—or did you leave at any

time from your first visit until the time that this Naval Air Station—

A. Yes, sir, we left.

Q. Where did you go?

A. Youngstown.

Q. Then I take it you came back?

A. Later on, yes, sir.

Q. Do you know what month it was that you left or what day or what week?

A. No, sir, I do not.

[fol. 886] Q. How long did you stay in Youngstown?

A. I do not remember that, sir.

Q. When you came back, did you come back to the Milanovich home?

A. I believe we did, yes, sir.

Q. That is your second trip back?

A. Yes, sir.

Q. Do you have any recollection of the month and the date.

A. No, sir.

Q. Neither the month nor the date?

A. No, sir.

Q. Did you, on this second occasion, stay entirely in the Milanovich home while you were here in the Norfolk area?

A. I do not know, sir.

Q. Do you know whether or not you spent any time any place else, that is, to reside temporarily?

A. I do not remember definitely.

Q. Now, your first trip down, was that by airplane or by automobile?

A. It could have been either one. I don't remember exactly.

Q. You do not know whether it was by plane or car?

A. I believe—I believe it was by car, but I could be mistaken.

[fol. 887] Q. All right, sir, fair enough. The second trip, was that by plane or car or some other media?

A. I believe the second trip—I don't know, sir. I wouldn't say.

Q. You do not remember that either?

A. No, sir.

Q. Then did you leave before the May 17th date, which is the—well, we will put it the Naval Air Station robbery or theft, did you leave again before that happened?

A. I do not remember, sir.

Q. You do not remember that?

A. No, sir.

Q. Assuming you did not leave, because we do not know—at least, I do not and you do not remember—

A. Yes, sir.

Q. —did you leave the Milanovich home before that place was purloined and stay any place else?

A. I do not remember, sir.

Q. You do not remember that?

A. No, sir.

Q. Did you have your clothes with anybody else other than in the Milanovich home or did you leave them with anybody else?

A. I always brought some down. I couldn't state definitely whether they were left at the other places or at [fol. 888] the Milanovich home.

Q. Mr. Grimmer, I take it you are a married man?

A. Yes, sir, I am.

Q. Do you know whether or not you lived—

Mr. Parsons: If your Honor please, I am going to object to this question. There is no materiality to this question at all.

Mr. Koutoulakos: It has a lot of materiality, your Honor. I am going to show exactly where he stayed just before this Naval Air Station job, and I will refresh his recollection.

Mr. Parsons: I do not know how you are going to prove it.

Mr. Koutoulakos: I am going to ask him.

The Court: You can ask him whether or not he stayed at so and so's house.

By Mr. Koutoulakos:

Q. Did you spend any time in the home of either Millie Gauger or Scotty Brennan before the Naval Air Station job?

A. I remember on one occasion being at Millie Gauger's house.

[fol. 889] Q. Just one occasion?

A. I would say one. I'm not sure.

Q. Well, just tell us what is right.

A. Yes, sir, I am going to tell you the truth.

Q. When you say "one occasion", do you mean one day or one visit or one week?

A. I don't know how long it was, sir. I don't know if it was one or two visits.

Q. In any event—and I take it, then, you did not spend any time with Scotty before the Naval Air Station—it was at Millie's place; is that right?

A. I beg your pardon, sir?

Q. Then I take it that you did not, at any time, either visit or go to Scotty's place?

A. I do not remember.

Mr. Parsons: Identify Scotty as to whom that might be.

Mr. Koutoulakos: I already have, and he knows who I am talking about.

Mr. Parsons: I know who you are talking about, but does the jury?

By Mr. Koutoulakos:

Q. Do you know who I am talking about—Scotty?

A. I assume—

Q. Tell us whom you have in mind.

[fol. 890] A. Mrs. Brennan.

Q. Is that who you have in mind?

A. Yes, sir.

Q. That is exactly who I am referring to.

A. All right, sir.

Q. And she is known as Scotty?

A. Yes, sir.

Q. Did you have your clothes there with Scotty?

A. At which occasion, sir?

Q. I am asking you and you tell us the occasion and I am talking specifically—and you know it—before the Naval Air Station Exchange was robbed, did you have your clothes with Scotty?

A. I don't remember.

The Court: Let him answer one question at a time, if you will.

Mr. Koutoulakos: Pardon.

A. I don't remember distinctly.

By Mr. Koutoulakos:

Q. Well, could you have had them with her and forget it?

A. On the second trip you are talking about?

Q. I am talking about the second trip and before you—I mean stole from the Naval Air Station Exchange?

A. It's possible, yes, sir.

[fol. 891] Q. As a matter of fact, you know that you spent some time with Scotty Brennan; isn't that correct?

A. I know that I spent some time with Scotty.

Q. Not just one occasion, you spent several days there; isn't that correct?

A. I wouldn't say several days.

Mr. Parsons: If your Honor please, he is badgering the witness.

A. It depends on what you mean by "several days".

By Mr. Koutoulakos:

Q. Several days is several days, more than one day.

Mr. Parsons: He is arguing, your Honor.

By Mr. Koutoulakos:

Q. That is what I mean. Did you stay more than one day with Scotty Brennan?

A. I believe so.

The Court: At Scotty Brennan's house,

By Mr. Koutoulakos:

Q. House. Do you have any idea of the number of days?

A. No, sir, I do not.

Q. As a matter of fact, didn't you and Bennie tell the Milanoviches you were leaving town and staying over with

Millie Gauger or Scotty Brennan for some period of time before the Naval Air Station was stolen from?

[fol. 892] A. As to that part of the conversation, sir, I wouldn't swear, because, as I said, it was approximately four or five months, and it's not clear in my mind exactly.

Q. When you came here for this birthday party—

A. Yes.

Q. —did you not leave shortly thereafter?

A. And go where?

Q. And did you not tell the Milanoviches that you were leaving town?

A. I do not remember, sir.

Q. And did you not then take up residence either with Millie Gauger or Scotty Brennan, or both, both you and Bennie Guerrieri and Steve Milanovich?

A. I do not remember, sir.

Q. Do you deny doing it?

A. I do not deny anything, sir.

Q. A while ago, when I questioned you, you said only on one occasion you spent time, and that would be with Millie Gauger. Now, do you admit you spent time with Scotty Brennan?

Q. You did not ask me specifically.

Q. I asked you whether you spent time at any other place other than Millie Gauger's home. Do you deny that?

A. No, sir.

The Court: Anyway, he has changed that. Let's go on to [fol. 893] the next question.

By Mr. Koutoulakos:

Q. And I put it to you that you and Ben Guerrieri drove around and tried to purchase tools before the Naval Air Station job?

A. I do not remember that, sir.

Q. Do you deny that?

A. I do not deny anything, sir.

Q. You do not deny anything?

A. No, sir.

Q. Now, I want to show you a couple of keys here and

ask you whether or not you can identify them? I want to show you two keys, Mr. Witness.

Mr. Parsons: May I examine the keys?

By Mr. Koutoulakos:

Q. And ask you—excuse me.

Mr. Parsons: May I examine the keys?

Mr. Koutoulakos: I am sorry.

Mr. Parsons: I would like to know the purpose for which the keys are being introduced.

The Court: It may be connected up. I do not know anything about them either. There are a lot of things that you [fol. 894] introduced, Mr. Parsons—

By Mr. Koutoulakos:

Q. Take a look at those keys, Mr. Witness, and tell us whether or not you can identify them; and if so, with whom did you leave them?

A. They are similar to keys that were in my possession at one time.

Q. And whom did you leave them with?

Mr. Parsons: If your Honor please, he has not identified these keys. He said they are similar.

The Court: Well, he is about to identify them. He wants to know whom they were left with.

By Mr. Koutoulakos:

Q. Did you leave them with Scotty Brennan?

A. I do not remember, sir, if I left them with her.

Q. Did you leave any keys with anybody else?

A. I do not remember, sir.

Q. Do you recognize those keys?

A. I said they look similar to some keys that were in my possession at one time.

Q. Could they be your keys?

A. Possibly, sir.

[fol. 895]

By the Court:

Q. What are they similar to; that is, what are they supposed to fit, if you remember?

A. Well, I believe, sir, they fit a car and an apartment.

By Mr. Koutoulakos:

Q. What car and what apartment?

A. The car would be a '58 Pontiac belonging to Scotty Brennan and the apartment is over in Norfolk some place.

Q. Can you give us the address, please?

A. No, sir, I could not.

Mr. Koutoulakos: I would like to have these marked for identification and introduced.

The Court: Let it be marked as Defendant's Exhibit 2, the keys—they are both the same. You cannot identify them. Defendant's Exhibit 2 for identification will be one set, one key, and Defendant's Exhibit 3 for identification will be the other set.

(The keys were marked as Defendant's Exhibit Nos. 2 and 3 for identification.)

[fol. 896]

By Mr. Koutoulakos:

Q. If what you say is so, that your time was—just about all, with the exception of the little time you said you spent away—was spent with the Milanoviches, what purpose did you have for an apartment key?

Mr. Parsons: I object to the statement by counsel, which is purely testimony on his part. Ask questions. Do not testify.

The Court: Objection sustained.

By Mr. Koutoulakos:

Q. What reason did you have for an apartment key in the Norfolk area?

A. She was my friend.

Q. I am asking you for the reason. You are telling us she was your friend, and I do not know what you are talking about.

Mr. Parsons: If your Honor please, that is a perfectly adequate answer. It could serve no purpose to go into it, nor—

The Court: Let's be frank about it.

Mr. Koutoulakos: I am asking him—

The Court: Let's be frank about it. I think this witness should be advised there is such a law on the books in the [fol. 897] State of Virginia that deals with certain immoral relations.

Mr. Koutoulakos: I am not concerned with that.

The Court: Well then, what is the purpose of the question?

Mr. Koutoulakos: I do not know. I found the keys.

The Court: If you do not know the purpose of the question, then the objection is sustained.

Mr. Koutoulakos: Well, are you denying me the right, your Honor, to ask him what he wanted with the apartment key in Norfolk?

The Court: Yes, sir.

Mr. Koutoulakos: All right, I take an exception.

The Court: That is, unless you can state the purpose for which you are seeking the information.

Mr. Koutoulakos: I have to be honest with your Honor. I do not know. I just have the keys. I do not know what they were used for.

The Court: All right. If you do not know and I do not [fol. 898] know, that is it. That is all I can say.

Now, gentlemen, we have reached the hour for recess. All right, Mr. Marshal, if you will take the witness.

Mr. Koutoulakos, if you will take advantage this evening, as soon as we excuse the jury, to examine all necessary statements in connection with Mr. Grimmer—

Mr. Koutoulakos: Yes, sir, your Honor.

The Court: So you can be prepared to conclude the examination tomorrow.

Mr. Koutoulakos: Yes, your Honor.

The Court: Members of the jury, I will excuse you at this time until 9:30 tomorrow morning. Please do not discuss the case with anyone, nor permit anyone to discuss the case with you. If you come in early tomorrow, please come

in here rather than out in the hall. You may be excused at this time.

(The jury retired from the courtroom at 5:00 p.m.)

[fol. 899] PROCEEDINGS OUT OF THE PRESENCE
OF THE JURY

The Court: Mr. Koutoulakos, may I inquire whether you have any purpose in asking the witness why he is in possession of the keys that you have presented for identification as Defendant's Exhibits 2 and 3? I want to speak frankly to you now, since the jury has gone. You are not an amateur; I am not an amateur in the sense of not knowing what goes on among this type of people.

Mr. Koutoulakos: Well, Judge, I do not know if there was anything immoral. I am honestly telling you I do not know what they are for. If they are for an immoral purpose, I am not interested in showing that.

The Court: He said he had the keys because the woman was a friend of his.

Mr. Varoutsos: Your Honor, may I answer that? I can give you a reason.

The Court: Yes, give me a reason.

Mr. Varoutsos: In the opening statement Mr. Parsons was trying to show the headquarters was the home of the Milanoviches' and they were staying there, and the man said they were there only one day in this apartment and we [fol. 900] want to show he spent much more time there and had access to this place and that they left—that is part of our defense—and they left after that and our clients were leaving town and they had access in and out of the apartment.

The Court: The witness has not denied that he had access to the apartment—

Mr. Koutoulakos: All right.

The Court: —and he has not denied that he had access to the key.

Now, what my position is, if you gentlemen are trying to badger him by saying something which—while I admit that the crime, such as it is, is perhaps certainly not within

the jurisdiction of this court and perhaps of such insignificance that the State court would never take jurisdiction, yet if he is guilty of any immoral act, I would have to warn him of his rights, and I do not think the jury is so ignorant that they do not know what goes on anyway.

Mr. Koutoulakos: All right.

The Court: I do not see the purpose of it. You have established that she had access to the apartment; that he had a set of keys that belonged to this Scotty Brennan in his [fol. 901] possession. Now, what more do you want?

Mr. Koutoulakos: All right. Now, your Honor, I want to represent to the Court, in absolute good faith, I am not interested in his immoral activities; I am not interested at all in them, however, the point was made by a witness who said she had been threatened, that the reason her husband made a supplemental statement exonerating these people was because he was concerned about her life. We are going to show that he was not concerned about her life at all. He was living with this other woman.

Mr. Parsons: If your Honor please, that does not follow—

The Court: People living in this sphere of life, they do not worry about those minor matters, such as that, Mr. Koutoulakos.

Mr. Koutoulakos: Other than that, that is all I know of.

The Court: Now, if you can establish by Scotty Brennan willingly that she did live with this man, that is all right, but anyone who comes here voluntarily—but here is a man, who I must warn and it is my duty to warn anybody where [fol. 902] they are liable to testify on a matter which may incriminate them in connection with a possible crime, it is my duty to warn them, and if you ask Scotty Brennan that, I will have to warn her. I would have to warn anybody. That is an inherent right that everybody has.

Mr. Koutoulakos: I was not trying to show an immoral thing. I was not even interested in that.

The Court: I suspect the purpose was to show the immorality. That is borne out by what you just said, you wanted to establish that he was living with this woman.

Mr. Koutoulakos: That was just called to my attention by Mr. Davis. I did not have that in my mind.

The Court: Don't you call that immorality?

Mr. Koutoulakos: No, I think it is in rebuttal to her testimony. Whether it is immoral, that is incidental.

Mr. Parsons: How could that rebut her testimony?

Mr. Koutoulakos: He said he wrote this letter because he was concerned about her.

[fol. 903] The Court: If there is nothing further, gentlemen, we will adjourn until tomorrow morning at 9:30.

(Thereupon, at 5:05 p.m., an adjournment was taken until the following morning, December 5, 1958; at 9:30 a.m.)

[fol. 904]

Newport News, Virginia
December 5, 1958

Appearances: As previously noted.

The Clerk: Members of the jury panel, answer to your names.

(Thereupon, the Clerk polled the members of the jury.)

The Court: I think the witness Grimmer was on the stand.

CLAYTON T. GRIMMER, the witness on the stand at the adjournment, resumed the stand and testified further as follows:

The Court: This witness has previously been sworn. You may continue, Mr. Koutoulakos.

Cross examination.

By Mr. Koutoulakos:

Q. How are you this morning, Mr. Grimmer?

A. Very good, sir. How are you?

Q. Now, as I recall, just generally, I believe we got to a point where you had just told us about approximately how long it took for the safe door to be opened on the Naval [fol. 905] Air Station job; is that correct?

A. I think so, yes.

Q. And that was, to be fair with you, on May 17th—that is the date?

A. I believe so, yes.

Q. After the job was completed, I believe you said that the money—was all of the money taken that was taken from the safe—was all that money, whether it be cash or, rather, currency or coin, was that taken off the Post by you and Ben?

A. Yes, sir.

Q. The entire amount?

A. Yes, sir, it was.

Q. There was no money left on the Post?

A. Do you mean at one trip, sir?

Q. Well now, I am talking about the first safe job.

A. Yes, sir.

Q. And that is the Naval Air Station. Now, do not get confused—

A. Yes, sir.

Q. —because I realize you were involved in two. I understand this is the first one.

A. Yes, sir.

Q. I understand you did get the safe door open and removed the money from it?

[fol. 906] A. Yes, sir.

Q. Or, at least, as much as you all could handle?

A. Yes, sir.

Q. How much money was it?

A. I don't remember offhand, sir.

Q. Was it counted?

A. Pardon?

Q. Was it counted?

A. Later on, yes, sir.

Q. Where was it counted?

A. At the home of Mike and Virginia Milanovich.

Q. That is on the 17th. So, as I take it then, after you all—and when I say “you all”, I mean you and Bennie—finished the job, you proceeded from the Air Station then to the Milanovich home?

A. Yes, sir.

Q. There is no question about that?

A. Yes, sir.

Q. And the Milanoviches were home?

A. I beg your pardon?

Q. I say the Milanoviches were there?

A. They went with us, yes.

Q. I took it from your testimony that they drove you back to the house?

A. Yes, sir.

[fol. 907] Q. And we are talking about the 17th?

A. I believe that's the date.

Q. That is the first job. And I assume it took quite some time, after you got home or their home, to count that money?

A. I would say so.

Q. Now, assuming, from what you told us yesterday, that, with the time element involved, getting there at the time you said you all got there and the approximate time to do the job, which was two and a half to three hours, approximately in that vicinity, did you have any way to get picked up at all by the Milanoviches?

A. After the job was finished?

Q. Yes, sir.

A. Yes, sir.

Q. How long did you wait?

A. We didn't wait, sir.

Q. So you were picked up immediately?

A. Pardon?

Q. You were picked up immediately after you got out of the building?

A. They were parked nearby.

Q. Nearby, by the Exchange?

A. Not nearby.

Q. But inside the fence?

[fol. 908] A. Yes, sir.

Q. No question about that?

A. No question about that.

Q. So they were not on the highway, they were inside the enclosure?

A. Yes, sir.

Q. And near the Exchange Building; is that correct?

A. Yes, sir.

Q. All right. Then it took you—and tell me, were you all stopped on the way out, or how did you get out?

A. I don't remember, sir.

Q. I assume that being that there was an automobile present, that you all had to use one of the entrances or exits?

A. Yes, sir.

Q. It is a fair assumption to make that there was a guard there, assuming you came out that way?

A. Yes, sir.

Q. And you do not recall whether or not you were stopped?

A. I do not recall, sir.

Q. Where was all of this money placed after you removed it from the Exchange Building? Was it put in the Milovanovich car?

A. Well, the first part of it was, yes, sir.

Q. The first part of what?

[fol. 909] A. The money.

Q. I thought you said you took it all with you?

A. I said not on the first trip.

Q. Now, we are still on the 17th of May?

A. That's right.

Q. Are you talking about the same job?

A. Yes, sir.

Q. What did you take with you?

A. We had taken a bag containing currency and some silver.

Q. And what?

A. And a small amount of silver.

Q. This silver—I assume, then, you left some amount of it back; is that correct?

A. Yes, sir.

Q. Where did you leave that?

A. That was left in the lobby of the theatre, if I remember correctly.

Q. You left it right in the lobby?

A. It was on the steps.

Q. Was it in the lobby or on the steps?

A. It was on the steps.

Q. There is no question in your mind about that?

A. No, sir.

Q. And you recall that?

[fol. 910] A. Roughly, yes, sir.

Q. Was this silver in a bag or was it loose?

A. It was in a suitcase.

Q. In a suitcase?

A. Yes, sir.

Q. And it was left in the lobby?

A. Yes, sir.

Q. Then you left. What part of the lobby was it that you left this silver in?

A. I do not remember offhand.

Q. Well, was it in the lobby? I believe you said yesterday that you came in through the theatre?

A. Yes, sir.

Q. Is that the lobby you are referring to?

A. Yes, sir.

Q. Because where the safe was was immediately across the hallway; is that not correct?

A. I think so, yes, sir.

Q. Now, you said it was left on some steps. That is in that lobby now that we are talking about?

A. In the theatre, yes, sir.

Q. Then it was not hidden, it was open to view?

A. Yes, sir.

Q. Then you left there, and you say the Milanoviches were parked inside, but near the building?

[fol. 911] A. Near the building, yes, sir.

Q. About how far from the building?

A. I don't know, sir.

Q. How much time would you say it took you from the time you all completed your job, put the money that you were going to take with you in a satchel and the money that was left there until you got into the Milanovich car?

A. I don't remember, sir.

Q. A half an hour?

A. I don't remember, sir.

Q. Fifteen minutes?

A. I don't remember, sir.

Q. Did it take any time at all?

A. Certainly.

Q. Pardon?

A. Certainly.

Q. Was it as much as five minutes?

A. I don't remember, sir.

Q. Did you go out the front way?

A. I don't know what you mean, sir, by the "front way".

Q. What exit did you use to get out of that Exchange with the satchel full of money?

A. As I stated yesterday, the same way we went in.

Q. You got out exactly the same way?

[fol. 912] A. I wouldn't say exactly, but the same route.

Q. And did you have to search for the Milanovich car or was it at a spot that was prearranged?

A. Well, it was in an area prearranged.

Q. Now, you are not familiar with the area?

A. No, sir.

Q. And it would have taken you, not being familiar with the area, some time to find the car; is that not correct?

A. The area wasn't big, sir.

Q. Was this a lighted area or a darkened area where they were?

A. I do not remember, sir.

Q. You do not recall that?

A. No, sir.

Q. How do you know it was their car? Was the car in such a condition—like the lights on or some prearranged signal? How were you to know that was the car?

A. We knew what kind of car it was, and that's the kind of car we were looking for and it wasn't too much trouble to find it.

Q. Well, that car was not made especially for the Milanovichs, there are other cars of that type; is that not correct?

A. Yes, sir.

Q. At the time you left the building, just exactly where [fol. 913] did you head?

A. We headed across to the place the car was supposed to be.

Q. You are certain of that?

A. I am quite certain.

Q. Then that took a little time?

A. Certainly, sir.

Q. What part of the car did you get in, front or back?

A. I do not remember, sir.

Q. What did you do with the money that you were carrying or you and Bennie had been carrying?

A. That money had been placed outside of the Exchange, if I remember correctly.

Q. Now, we are talking about the silver or the satchel that you—

A. The first bag that was taken out of the Post Exchange.

Q. That was placed outside of the Exchange Building?

A. Yes, sir.

Q. There is no question in your mind about that?

A. If I remember correctly, sir.

Q. Well, you were there, you ought to remember that.

A. It happened four or five months ago.

[fol. 914] Q. Pardon?

A. It happened four or five months ago.

Q. Nevertheless, you are here testifying as to those events. Now, if you do not know any of them, just say so.

A. Yes, sir.

Q. And how did that money get on the outside?

A. We had taken it, sir.

Q. Did you go through the door?

Mr. Parsons: If your Honor please, this is the third or fourth time he has carried him out of the building, and I see no point in going over it again.

The Court: I understand he said he went out the building about the same way he went in. Now, not exactly, that is, I do not mean that his footprints went in the same footprints that the others did, but didn't you come through a room, Mr. Grimmer, to go in there?

The Witness: We went on the roof, sir.

The Court: Went on the roof and you went back on the roof to get out?

The Witness: Yes, sir, back down the fire escape.

[fol. 915] By Mr. Koutoulakos:

Q. Then, I take it, after you all got in the car, you drove by the steps and picked up the satchel?

A. We drove by outside and picked up the money.

Q. Is that right?

A. Yes, sir.

Q. Why did you have to leave the satchel on the steps? Why didn't you carry it with you?

A. It was a little heavy.

Q. It was a little heavy?

A. Yes, sir.

Q. You had carried it out of the building—

A. Yes, sir.

Q. —up over the roof and out?

A. Yes, sir.

Q. Then it became heavy and you had to leave it in front of the steps?

A. Yes, sir.

Q. When you got into the car, what route, if you know, did you take to get to the Milanovich home? I do not mean streets.

A. I don't remember, sir.

Q. Was it a long distance or short distance?

A. I don't remember.

[fol. 916] Q. Did you have to stop at any stoplights or traffic signs?

A. I do not remember, sir.

Q. You were not paying any attention. Who was driving the car?

A. I don't remember that, sir. I believe Mike was—Mike Milanovich.

Q. Well, are you certain of that?

A. No, sir.

Q. Or are you just guessing?

A. I am not certain. I believe it was him, I said.

Q. Obviously, that took you some amount of time to get to the Milanovich home?

A. Yes, sir, certainly.

Q. That would put us in the neighborhood of what, four, five o'clock, in the morning?

A. I don't know, sir.

Q. Was it daylight when you all left that building, do you recall?

A. The first trip, it wasn't daylight, no, sir.

Q. It was not?

A. No, sir.

Q. Was the second trip daylight?

A. I don't remember, sir.

Q. Do I understand, from what you are saying now [fol. 917] so we can cut it a little short here; that on that

same morning you all returned to pick up the silver that was left back there?

A. Yes, sir, we did.

Q. And who went on that trip?

A. I don't remember.

Q. You do not remember what?

A. Who was in the car? Ben and I and Mike and Virginia Milanovich.

Q. You are certain of that?

A. Yes, sir.

Q. You all went to their home. At that time I assume you counted the money?

A. No, sir, we did not.

Q. Just left it there?

A. Yes, sir.

Q. Then you returned back to pick up the silver?

A. Yes, sir.

Q. Is there any reason why the silver could not have been picked up the first time while you were there?

A. I believe so, sir.

Q. Well, just tell us the reason.

A. As I stated, it was heavy—too heavy for one person to carry, and we decided to leave it on the steps and return for it. It had to be split later on into another satchel.

[fol. 918] Q. Didn't you feel that there was a greater risk involved in coming back a second time after this so-called robbery?

A. Sir, there is a risk involved in everything.

Mr. Parsons: Sir, he is arguing, which is not his prerogative.

The Court: I will permit it.

By Mr. Koutoulakos:

Q. Then this second trip took some time?

A. Yes, sir.

Q. Obviously?

A. Yes, sir.

Q. Do you have any idea what that time would be? Would it be in the neighborhood of five o'clock or thereabouts?

A. I don't remember, sir.

Q. Was there anybody there or around the vicinity of that building?

A. I don't believe there was, sir.

Q. Well, you ought to know, you were there. You do not recall?

A. No, sir, I don't recall.

Q. Who went to get the money, you or Bennie or Mike or Virginia?

A. Bennie and I.

Q. Where did Virginia and Mike stay then with the [fol. 919] car?

A. I don't remember clearly, sir.

Q. Well; you were supposed to meet them or they were supposed to meet you; is that not correct?

A. Yes, sir.

Q. How did you know where you were supposed to meet them if you did not know where they were?

A. I believe they were parked in about the same place.

Q. Then you got in the car, and I assume Bennie got out also?

A. Yes, sir.

Q. And he got back in the car? Then I take it you all proceeded back to the Milanovich home; is that right?

A. You mean after we got the silver?

Q. Yes, the second trip now.

A. I don't know what you are referring to, sir.

Q. I am talking about the silver. You said you went back a second time to pick up the silver you had left there?

A. Yes, sir.

Q. After you all picked up the silver, where did you go?

A. Back to the home of Mike and Virginia Milanovich—that's right.

[fol. 920] Q. Now, that took some time?

A. Yes, sir.

Q. Would that get us around to six, seven o'clock, in the morning?

A. I don't remember, sir.

Q. Did you ever look at the clock or time?

A. I don't remember.

Q. Was the sun up or out at that time?

A. I don't believe the sun was up at that time.

Q. You do not believe so?

A. No, sir.

Q. Now, you believe the money was taken out and it had taken two trips to go back and forth?

A. Yes, sir.

Q. Then at that time did you all divide the money?

A. After we got home, yes.

Q. And how much money was there?

A. I think there was only in the vicinity of \$23,000.00.

Q. How much?

A. \$23,000.00.

Q. \$23,000.00, and—

A. I won't say exactly.

Q. Didn't you all count it?

A. Yes, sir, I don't remember.

[fol. 921] Q. Who was counting the money?

A. All of us.

Q. Who?

A. All of us.

Q. How much did you get?

A. I don't remember offhand, sir.

Q. How much did Virginia get?

A. I don't remember offhand.

Q. How much did Mike get?

A. It was put into four separate piles.

Q. Four separate piles into \$23,000.00 gives me a figure of approximately a little better than \$5,000.00. Would that be correct?

A. I don't believe that was the amount, sir.

Q. Well, you said around \$23,000.00. It is your figure, Mr. Witness, not mine. Now, was it twenty-three or wasn't it?

A. I am not certain, sir.

Q. Why do you pick the figure twenty-three? Was that a guess?

A. I read it in the paper.

Q. What?

A. I read it in the paper.

Q. You perpetrated this theft and you had to read in the paper to see what you had stolen?

[fol. 922] A. I beg your pardon?

Q. I say you perpetrated this crime and you had to read an account in the papers to see what you actually had stolen?

A. Oh, no, sir.

Q. Well, did you feel that one of the other partners cheated you?

A. Well, there's a possibility, sir.

Q. You do not trust your own partners. Now, did you make any statement at all to the Federal Bureau of Investigation as to the amount of money that was involved?

A. I don't remember, sir.

Q. You do not remember making any statement regarding that amount?

A. I don't remember.

Q. But you are certain, though, what you told us is correct so far?

A. To the best of my knowledge, sir.

Q. The money was left in the lobby and on the steps?

A. To the best of my knowledge.

Q. Take a look at this statement, Mr. Grimmer—and this is one of several that I will be questioning you on—and see if this is one of several that you gave. Does that statement refresh your recollection in any way? And just stay with the first job. We will get to the second one.

[fol. 923] Mr. Parsons: Which statement did you show him, Mr. Koutoulakos?

Mr. Koutoulakos: I think it is the 26th statement.

By Mr. Koutoulakos:

Q. And I would like to direct your attention to the third page of that statement and get to that last paragraph which starts with "That same night," and if you will keep on reading—

Mr. Parsons: I think he can refresh his memory, but I do not believe that it is permissible to be read.

Mr. Koutoulakos: Well, for him to read it to refresh his recollection.

Mr. Parsons: He can read it but not aloud.

Mr. Koutoulakos: Well, he is going to answer some questions, I know that.

By Mr. Koutoulakos:

Q. I invite your attention to a statement that you made regarding where you said the money was placed.

A. Yes, sir. What about it?

Q. Just read it and see if it corresponds with what you said here in court today. Does that refresh your recollection as to where you said the money was?

[fol. 924] A. Somewhat, sir.

Q. What does that say, from your recollection?

A. I haven't seen anything in here about where the money was placed.

Q. You are able to read, are you not?

A. Oh, yes, sir.

Q. All right, I will point it out for you.

A. All right, sir.

Q. "We left the money in the bed of a pick-up truck that was parked by the door." Do you want to take a good look at that?

A. All right, sir.

Q. And refresh your recollection?

A. Yes, sir.

Q. Does it refresh your recollection?

A. Somewhat, yes, sir.

Q. That is not exactly like you said here today, is it?

A. I said to the best of my knowledge.

Q. Well now, you are under oath now, Mr. Grimmer.

A. Yes, sir, I do—

Q. In that statement you did not say anything at all about lobbies or steps, did you?

A. Specifically, no.

Q. Not "specifically". Any way you want to put it, [fol. 925] there is no reference anywhere whatsoever about lobbies or steps?

A. I don't believe so.

Q. Not "don't believe so". Read it and see if it is there.

A. Not in the statement.

Q. So at that time were you lying to the agent then or are you telling a story now?

Mr. Parsons: If your Honor please, I suggest this statement does not contradict or conflict with what he said. What

he said is in addition to that, but there is no conflict between these statements.

Mr. Koutoulakos: There is no conflict? He said the money was in the bed of the truck.

Mr. Parsons: He is not talking about the money being in the bed of the truck. He is talking about in the lobby. He added that here.

Mr. Koutoulakos: That is exactly right. I want to tell the jury it was added here.

Mr. Parsons: Certainly it was. It is not a conflict.

The Court: I think it should be allowed by the defense counsel to show what inconsistencies, if any, are apparent.

[fol. 926] Mr. Parsons: I have no objection to him showing any inconsistencies, if any exist, but I do object to him showing inconsistencies that are not.

The Court: Well, I told the jury that Mr. Koutoulakos is not the one who is testifying, it is the witness and, of course, Mr. Koutoulakos may ask him and read to him a portion of the statement and say, "Did you say this and is this correct?" I would prefer, for the purpose of clearing the atmosphere a little bit, that the word "lie" be dropped for a while.

Mr. Koutoulakos: All right, I will withdraw that word.

By Mr. Koutoulakos:

Q. Did you give a statement to the Federal Bureau, when you were giving them this statement, about where the money was left?

A. When I gave the statement to the Federal Bureau the job was somewhat fresh in my mind. I gave it to the best of my knowledge, and I wasn't asked specifically where the money was, so I didn't state it. I didn't think it was necessary.

Q. Did you make this statement: "We left the money [fol. 927] in the bed of a pick-up truck that was parked by the door"? Now, did you or didn't you?

A. Yes, sir.

Q. There is no question about that?

A. No, sir.

Q. Well, wasn't that referring to where the money was left?

A. You mean after we came out of the building?

Q. Yes, and I am talking about the 17th now.

A. Yes, sir.

Q. All right. Well, if you were not asked any question regarding it, why does that appear in here, if you know?

A. As I stated, it was fresh in my mind.

Q. It was fresh in your mind then?

A. Yes, sir.

Q. As a matter of fact, haven't you had your recollection refreshed by being shown a copy of this statement?

A. Just then, sir.

Q. Not just recently. Have you been shown copies of any statements you made by anybody before you testified here in court?

A. Only here in court, sir.

Q. Is this the first time you have seen it?

A. Yes, sir.

[fol. 928] Q. Then you do not know what is in these statements?

A. I have a good idea.

Q. Now, I will read further and ask you if you made this statement: "Mike was driving his car and he took us to his home. That same morning the four of us split the money four ways. My share was approximately \$4,000.00. The change was equally split as well as the currency. The checks were supposed to have been burned, by whom I do not know.

"Ben and I then drove back to Ohio in the 1953 Buick."

Did you make that statement?

A. Yes, sir.

Q. No question about that?

A. No, sir.

Q. There is no mention in this statement about going back for this silver, is there?

A. If it is not in there, sir, it wasn't mentioned.

Q. Well, do you feel that some member of the F. B. I. has changed your statement?

A. No, sir.

Q. Now, Mr. Grimmer, did your wife tell you that her life had been threatened?

A. Yes, sir, she did.

Q. Would you tell us exactly what she told you and when it was that her life had been threatened?

[fol. 929] A. I don't remember the date or the occasion, but she told me that her life had been threatened.

Q. Just tell the jury what she told you about how her life was threatened.

A. Well, she told me that she had been threatened; that if I testified she would be killed.

Q. Pardon?

A. She would be killed.

Q. Are those the exact words she used, if you testified she would be killed?

A. I wouldn't say those are the exact words, but she told me of the threat, and I think that's about it.

Q. Do you recall when it was that she told you of the threats?

A. When it was?

Q. Yes.

A. I believe—I believe it was in Atlanta, when she visited me.

Q. Is that the first time you became aware of the threat?

A. No, sir, it was sometime in the Fall when I was lodged in the Norfolk City Jail. Of course, she didn't tell me that she had been outwardly threatened then.

Q. She did not tell you she had been threatened then?
[fol. 930] A. Not outward.

Q. When you say "not outward", just what did she tell you—that she had been threatened by anybody?

A. She gave me the impression that she was scared, and her mother came down with her and I got the impression that fear was put there by someone else.

Q. Now, she told you that she was scared. There is no doubt about that in your mind?

A. Yes, sir.

Q. She was afraid of threats?

A. Yes, sir.

Q. Did you discuss that matter with the Federal Bureau of Investigation?

A. Yes, sir, I did.

Q. About the threats? Pardon.

A. Yes, sir, I did.

Q. And do you recall what you told them regarding the threats?

A. I told them that her life had been threatened and I didn't name any names. I didn't know.

Q. Did your wife name the people to you that had threatened her?

A. I don't believe so, sir.

Q. Pardon?

A. I don't believe so.

[fol. 931] Q. Now, the F. B. I. questioned you quite extensively about the threat, did they not?

A. No, sir.

Q. There wasn't much questioning regarding the threat?

A. There was some, yes, sir.

Q. So-called threat. What?

A. There was some, yes, sir.

Q. Do you recall what you told them other than what you have just told us here now?

A. Not too much of it, no, sir.

Q. How many threats did your wife tell you she had gotten.

A. I don't remember, sir.

Q. Was there more than one?

A. I don't remember that.

Q. Was it just one?

A. I believe it was.

Q. Just one?

A. I believe it was.

Q. Did she tell you how she was threatened? Was it by somebody putting a gun in her head?

A. I don't remember that, sir.

Q. Did she make any statement at all as to how or the manner in which she was threatened?

[fol. 932] A. Well, she said someone had told her that she would be killed if I testified.

Q. Did she name this someone?

A. I don't recall, sir.

Q. Did she tell you Steve did it?

A. I don't recall, sir.

Mr. Parsons: Steve, I assume, is Steve Milanovich?

Mr. Koutoulakos: Yes, Steve Milanovich.

By Mr. Koutoulakos:

Q. But, again, you are certain that she was concerned about the threats?

A. Yes, sir.

Q. I want to show you this statement, Mr. Grimmer, and ask you to refresh your recollection, and I am referring to a statement which was dictated November 24, 1958, and it was on the November 20th meeting with the agents, which was just a few days ago.

A. Yes, sir.

Q. I show you this item, and see if it will refresh your recollection regarding the so-called threats. Does it refresh your recollection?

A. Somewhat, yes, sir.

Q. Let me read it now to ask you whether or not you made that statement. Did you make this statement—now, [fol. 933] there is no question that this is an F.B.I. agent's report?

A. I understand that, sir.

Q. And I will quote from the report: "Grimmer was questioned extensively concerning the details of the threat and also as to who made the threat to his wife in regard to this matter. He advised that at the time, he could not possibly furnish any additional information concerning this matter." Did you tell them that, you could not furnish any additional information?

A. I believe so, sir.

Q. "He stated that his wife visited him approximately three or four weeks ago at Atlanta, Georgia, and at that time related to him that she had been taken against her will from Youngstown, Ohio, to Cleveland, Ohio, and kept at an apartment at Cleveland, Ohio, over a week end." Did she tell you that?

A. I don't remember, sir.

Q. Did you make that statement to the F. B. I.?

A. It was somewhat to that effect.

Q. Not "somewhat to that effect." Did you or didn't you tell them just what I read to you?

A. I don't believe I stated that she was taken against her will.

Q. Well, do you feel then that the F. B. I. has changed your statement?

A. I made no statement such as that, sir.

[fol. 934] Q. Then you deny what is in this statement?

A. No, sir, I don't deny.

Q. Well, do you admit it?

A. It's somewhat true.

Q. Well, do not say "somewhat true". Either it is true or—

A. It's partly true.

Q. Which part is true?

A. About the part going to Cleveland.

Q. How about the weekend part, you say that is not true?

A. I don't know about that.

Q. Do you feel this agent, who made this statement in the report, was only giving part of the truth?

A. He might have gotten the wrong impression in the interview.

Q. But if he did, he had to get it from you, because he was talking to you?

A. Yes, sir.

Q. All right. I will continue reading: "Grimmer further stated that when his wife visited him at the Norfolk, Virginia City Jail prior to the time that he was sentenced, she made a passing comment to the effect that she had received a threat but at that time did not elaborate on the comment and acted rather unconcerned about the whole matter." [fol. 935] Did you tell that to the F. B. I.?

A. Yes, sir.

Q. So she was not concerned about any threat?

A. At that time.

Q. At that time?

A. No.

Q. "He advised that he obtained the impression that she had received a threatening telephone call but at that time she did not realize the gravity of the threat she had re-

ceived." So did you tell the F. B. I. it was a telephonic threat?

A. I don't remember distinctly, no, sir.

Q. Do you deny what is in that statement is what you said?

A. No, sir.

Q. Do you admit it?

A. Part of it, yes, sir.

Q. What part do you admit?

A. Some parts in there.

Q. Then do you feel that some parts have been changed or altered?

A. I wouldn't say they have been altered.

Q. By whom?

A. They were put down to the best of their knowledge by the agents that took them.

Q. We will get to that. Just tell us the parts that have [fol. 936] been altered, that you feel have been altered.

A. I don't believe some parts were altered.

Q. You tell us which part.

A. I didn't say any parts were altered.

Q. You made a statement to me which indicated some part had been changed. Tell us which part.

A. I don't believe any of it was changed.

Q. Then you admit it as being true?

A. I say he got the wrong impression, maybe.

Q. Who got the wrong impression?

A. The agent taking the statement.

Q. And he had to get that from you?

A. Yes, sir.

Q. Now, I will keep reading. "Grimmer was again questioned concerning further details of this threat." This is the questioning that you say did not take much time—

A. That's right.

Q. —and it was not extensive—

A. That's right.

Q. —and just not many days ago—

A. Yes, sir.

Q. —right?

A. Yes, sir.

Q. "But stated that his wife was the only person about whom he was concerned and that he would take no action [fol. 937] whatsoever that would jeopardize her welfare." You did say that, I assume?

A. Yes, sir.

Q. That part has not been changed.

A. No, sir.

Q. "He advised that the writing of this letter to the United States Attorney was motivated by the visit of his wife at Atlanta, Georgia, and the information which she conveyed to him at that time concerning the threat she had received." Now, listen to this: "Grimmer also stated—" —and we are talking about the Atlanta visit now—

A. Yes, sir.

Q. —"that his wife did not seem concerned over the threats and told him that she could take care of herself." Now, which is true, Mr. Witness?

Mr. Parsons: If your Honor please, that calls for a conclusion as to the motives of why Mrs. Grimmer might have told him that she was not concerned and the motives would seem to be quite obvious.

Mr. Koutoulakos: I am concerned with the truth or falsity of his testimony in court.

Mr. Parsons: How would he know what she knows?

Mr. Koutoulakos: I am asking if he knows whether this [fol. 938] statement is true—"and told him that she could take care of herself"—and my question is—

Mr. Parsons: That is not what she said. Read what it says, "That his wife did not seem concerned over the threats and told him that she could take care of herself." That is what she told him.

Mr. Koutoulakos: He told this jury today, when I asked him if she was concerned, he said she was frightened.

Mr. Parsons: That is correct.

Mr. Koutoulakos: At the Atlanta meeting.

The Court: I will permit the question.

Mr. Parsons: Stick to what the statement says and find out what the facts are.

Mr. Koutoulakos: Now, wait a minute, your Honor. I think he is completely out of order. I am reading exactly verbatim from the statement made by the F. B. I.

The Court: I will permit the question and you gentlemen stop your arguing.

[fol. 939] By Mr. Koutoulakos:

Q. Did you make that statement to the F. B. I.?

A. What statement was that, sir?

Q. And I repeat the statement verbatim, "Grimmer also stated that his wife did not seem concerned over the threats and told him that she could take care of herself."

A. You are asking me was she concerned?

Q. I am asking you whether or not you told this to the F. B. I. You know what I am asking you, Mr. Grimmer.

A. Yes, sir.

Q. You told that to them?

A. Yes, sir.

Q. Didn't you, during my cross-examination of you while you have been on the stand—did you or did you not tell this jury that she was concerned?

A. I believe so, sir.

Q. And that is the reason you wrote the statement, the retraction?

A. Yes, sir.

Q. But in this statement to the F. B. I. you say she was not concerned?

A. This interview was somewhat after.

Q. Just answer my question.

A. Yes, sir.

The Court: He is trying to answer it if you let him.

[fol. 940] Mr. Koutoulakos: I am letting him, your Honor.

By Mr. Koutoulakos:

Q. Now, which is true, she was or she wasn't?

A. I believe she was.

Q. Don't "believe". Which was it?

A. I have to get an impression from what she told me.

Q. Now, did your wife, when she visited you in Atlanta, tell you who was present at this so-called threat meeting?

A. I do not recall, sir.

Q. Do you recall talking to any member of the Federal Bureau of Investigation on November 21st of this year regarding the threats?

A. It was discussed over at the jail, but voluntarily.

Q. Do you remember what you told them then?

A. I do not remember exactly, no, sir.

Q. I show you another statement and ask you to refresh your recollection.

A. I understand, sir. If you'd ask these questions, I could tell you.

Q. Which question is it you do not understand, Mr. Witness?

[fol. 941] A. You pick out your question, sir, and I will give you an answer.

Q. My question to you, before I gave you that sheet, was, did your wife tell you who was present?

Mr. Parsons: If your Honor please, Mrs. Grimmer has testified. This would be pure hearsay.

The Court: Well, I do not know.

Mr. Koutoulakos: I am questioning him about his statement to the F. B. I.—not hearsay, as far as I am concerned.

Mr. Parsons: It would be something that she told him.

Mr. Koutoulakos: Well, regardless, don't you want it to come out what she told him at the jail? Are you worried about it?

Mr. Parsons: No.

The Court: You gentlemen stop arguing. I have overruled the objection, and let's proceed.

Mr. Koutoulakos: All right.

By Mr. Koutoulakos:

Q. Did you tell this to the Federal Bureau of Investigation agents—

Mr. Parsons: Tell him what he is supposed to have said [fol. 942] so we know what you are talking about.

The Court: Mr. Parsons, if you wish to object, direct your remarks to me and let's stop this bickering between counsel or I am going to have to take some action.

Mr. Koutoulakos: All right.

By Mr. Koutoulakos:

Q. And I am quoting now.

A. Yes, sir.

Q. "Grimmer stated that Donna—" —which, I assume, is your wife; is that correct?

A. That is correct.

Q. —"visited him at the United States Penitentiary at Atlanta, Georgia; in late October or early November, 1958."

A. Yes, sir.

Q. Did you say that?

A. Yes, sir.

Q. "And she told him at that time that in the latter part of June, 1958, on a week end, she was taken from Youngstown, Ohio, by Benjamin Guerrieri and driven to the home of 'Big Ann'." Did you say that?

A. Yes, sir.

Q. "Sister of Mike and Steve Milanovich, in Cleveland, Ohio." Did you say that?

[fol. 943] A. That is correct.

Q. And this, I assume, is what your wife told you?

A. Yes, sir.

Q. "And kept there for the week end." Did you say that to the F. B. I.?

A. I believe I said that it was a weekend.

Q. Do you feel this statement has been changed or altered?

A. No, sir.

Q. These are your words that I am repeating to you?

A. Yes, sir.

The Court: There is no question of changing or altering. It is a question of whether the agent, according to Mr. Grimmer, got an erroneous impression of what Mr. Grimmer told him. There is no accusation of changing or altering the statement itself.

Mr. Koutoulakos: Your Honor, this man is on the stand and he is testifying and I am asking specifically—and I am sure no agent would change anything in this report—and I am asking him whether he did not tell them that. There is no misinformation here, as I get it. Either he told them or he did not.

[fol. 944] The Court: You misunderstood me. It is not a question of changing or altering that written statement. It is a question of whether the agent recorded it correctly, according to this gentleman, according to this witness.

Mr. Koutoulakos: Your Honor, then what he said—

The Court: All right, go ahead. I am not going to argue with you either.

By Mr. Koutoulakos:

Q. Now, "Guerrieri—" —and I am quoting again— "allegedly told Donna that there was to be a conference and that she was to be present whether she wanted to or not." Did you tell that to the agent?

A. I believe I did, yes, sir.

Q. "Steve Milanovich, 'Big Ann', and Guerrieri were present at this conference." Did you tell that to the agent?

A. I believe I did, yes, sir.

Q. "Grimmer stated that he did not know if any other persons were present." Did you say that?

A. That is correct.

Q. "Grimmer stated that during this week end, Donna considered leaving on several occasions, but that she did not because of the fear of physical violence." Did you tell that [fol. 945] to the agent?

A. I believe I did.

Q. "Grimmer continued that at one point during this week end, one of the persons, whom Grimmer refused to name, held a gun to Donna's head and remarked, 'If Mike goes to prison, you'll get yours.'" Did you tell that to the agent?

A. I believe I did.

Q. Who was the man who was holding the gun?

A. I don't know exactly, sir. What I mean to say, I don't remember. She told it to me and I got my own impression.

Q. Did she specify or give a name?

A. She said, I recall, that she was threatened by Virginia Milanovich and Steve only, said that he would verify what she said.

Q. Is that right?

A. Yes, sir.

Q. Didn't you, Mr. Witness, in the presence of myself and those two other lawyers in the jail, just last Sunday, tell us that it was Steve Milanovich that was supposed to have threatened her with a gun and there was no mention whatsoever about Virginia? Do you deny making that statement?

A. No, sir, I do not, and I was not under oath either.

Q. You were lying then?

A. I could have been.

[fol. 946] Q. You were not telling us the truth then?

A. That is correct.

Q. But you did tell us that it was Steve?

A. Yes, sir, I did.

Q. Now you say it is Virginia. Have you had an opportunity to talk to your wife since she has testified?

A. Certainly, sir.

Q. And where was that?

A. It was at the jail here.

Q. But she has talked to you?

A. Yes, sir.

Q. And after she testified the other day, did she meet you in the hallway? What I mean by "meet", I do not mean a prearranged meeting, but did you see each other in the hallway?

A. We had visits out there, yes, sir.

Q. And where did you go?

A. Where did we go?

Q. Did you go in any room out there?

A. I could only go out there, sir.

Q. Were you given any privacy at all to talk to each other?

A. You are not given privacy when you are in custody.

Q. In whose custody were you?

A. The United States Marshal.

Q. Were you handcuffed?

[fol. 947] A. No, sir.

Q. Were you permitted to take her any place in the immediate vicinity, to any immediate room?

A. No, sir, just talked.

Q. You did not go to any room now?

A. No, sir. We might have been in the room out there. I don't recall.

Q. You do not remember that?

A. As I said, we just visited.

Q. And during these visits you did have some conversations?

A. Certainly.

Q. No question about that?

A. No question about that.

Q. And she visited you in the Newport News Jail?

A. Yes, sir.

Q. Since your arrival over here?

A. Yes, sir.

Q. Now, I will continue reading: "Grimmer stated that he did not wish to make an official complaint of this incident, nor did he want the F. B. I. to conduct any investigation concerning it. He advised that he felt that this incident was prompted by about 'fifty percent alcohol.'" Did you tell them that?

A. Yes, sir, I did.

[fol. 948] Mr. Parsons: Read the rest.

By Mr. Koutoulakos:

Q. "But nonetheless, he has a genuine fear for his wife's welfare." Did you tell them that?

A. Yes, sir.

Q. "He stated that after Donna told him of this incident at the Atlanta Penitentiary, he decided to write the letter to the United States Attorney at Norfolk, Virginia." Well, that letter was addressed to Virginia and Mike Milanovich; is that correct?

Mr. Parsons: Actually, that is correct, he did address such a letter to me.

Mr. Koutoulakos: I thought it was a copy.

Mr. Parsons: He addressed it direct to me. It is identical to the other one.

Mr. Koutoulakos: But this one says it is a copy.

By Mr. Koutoulakos:

Q. Then you sent two out, one to the District Attorney and one to the Milanoviches?

A. Yes, sir.

Q. Then the one you sent to the Milanoviches—you said copies to "Mike and Virginia and L. Parsons." I assume that meant you sent a copy out to Mr. Parsons?

A. That is correct, sir.

[fol. 949] Q. All right. Were you questioned at all about the truth or falsity of that exonerating letter by the agents?

A. Which letter, sir?

Q. The November 5th letter.

A. Was I questioned about that?

Q. Yes. Were you asked to either affirm or deny the contents of the last letter, the November 5th letter of retraction? Do you know which one I am talking about now?

A. Yes, sir.

Q. The one you sent to Mike and Virginia and Mr. Parsons.

A. Yes, sir.

Q. Were you asked by any agent or agents to either affirm or deny what was in that letter or statement, whatever you want to call it?

A. I don't recall sharply, but I believe I was.

Q. Do you remember being questioned about it on November 20th?

The Court: You had been questioning him all along about that very statement right now.

Mr. Koutoulakos: Well, this also has a statement about this very letter, your Honor, the retraction letter. I was questioning him before about Donna's threats. This is—

[fol. 950] The Court: This is on the letter itself?

Mr. Koutoulakos: Yes, sir.

The Court: I see.

By Mr. Koutoulakos:

Q. Do you remember being questioned regarding the truth or falsity of the allegations contained therein?

A. Yes, sir.

Q. Now, inviting your attention to November 20th, do you recall at that time what you told the agents—go ahead, take a drink. Now, I am referring specifically to November 20th, and I will show you this document so you can refresh your recollection. Do you recall being confronted with that letter? And the letter is the one, you know, of November 5th.

A. Yes, sir.

Q. And asked whether or not you preferred to comment on each and every allegation contained in that document?

A. Yes, sir.

Q. Do you remember that?

A. Yes.

Q. Did you say that it was false or true?

A. On two occasions, by visit of agents in the Newport News City Jail, I made no comment. Upon the third visit—

[fol. 95I] Q. Well, we will take them one at a time. On the first visit you made no comment when you were asked?

A. That's correct.

Q. You refused to say one way or another?

A. The letter stood as it was.

Q. The letter stood as it was. Then there was a second visit?

A. Yes, sir.

Q. And you refused to make any comment one way or another; is that right?

A. Yes, sir.

Q. Then there was a third visit by the F. B. I., I take it; is that correct?

A. Yes, sir.

Q. And on that third visit, at that time, I believe you decided to say it is not true; is that correct?

A. I told them that the letter was true.

Q. Thank you. That the letter was true?

A. Yes, sir.

Q. Now, I do not know who is going to lose his voice

first, you or I, but on this—getting back to the threat, not what we have covered, but was it not your understanding, Mr. Grimmer, that during this week or, rather, the tail end of June, which has been quoted as you having said it [fol. 952] happened during that period, that she was, during that period, in the Milanovich home?

A. I don't remember, sir.

Q. I say, do you know that, whether she was or was not?

A. I presume she was. I don't know it.

Q. So then if she was in the Milanovich home, which is here in Norfolk, she could not have been in Cleveland, Ohio, to be threatened now, could she?

A. You are speaking about the two places at one time? I don't see how she could, sir.

Q. That is right. Now, let's go to the—I believe the other place, what is that, the Commissary? What is that, Little Creek Amphibious Base?

A. Yes.

Q. You are familiar with that place. All right. Now, Mr. Grimmer, after you all split the money, did you go immediately back to Ohio with Bennie?

A. I don't remember, sir.

Q. Did you remain in this vicinity for any period of time?

A. I believe for a day or so. I'm not sure.

Q. And where was that?

A. At the home of Mike Milanovich. I'm not sure.

Q. Well, if you are not sure, why don't say (sic) you are [fol. 953] not sure?

A. I'm not sure.

Q. Then you do not know whether you stayed or where you stayed; is that correct?

A. I don't remember.

Q. I do not want to mislead you now. This is back on the May 17th affair.

A. Yes, sir.

The Court: I thought you were talking about Little Creek.

Mr. Koutoulakos: Well, I say I do not want to mislead him.

By Mr. Koutoulakos:

Q. The May 17th affair, you do not know whether you stayed or not, but there did come a time, according to your testimony, you did leave to go to Ohio?

The Court: When are we talking about?

Mr. Koutoulakos: I am taking him back to May 17th and I am leading up to—

The Court: It is vitally important that we keep these events separate. Now, let's forget Little Creek.

Mr. Koutoulakos: Yes, sir.

The Court: All right. Mr. Grimmer, forget the Little [fol. 954] Creek job entirely. We are back on May 17th.

The Witness: Yes, sir.

By Mr. Koutoulakos:

Q. Do you know whether or not you remained in this area for any period of time after May 17th?

A. I don't remember, sir.

Q. And if so, where? Do you know whether or not you returned to Ohio or went to any other state shortly after the May 17th affair?

A. We did go back to Youngstown, yes, sir.

Q. When you say "we", is that you and Bennie?

A. Yes, sir.

Q. And what media did you use, plane or car, or what?

A. I don't remember, sir.

Q. You do not remember that?

A. No, sir.

Q. And when was it, if you remember, that you returned back to the Norfolk area for the Amphibious job?

A. I don't know exactly, sir.

Q. Do you know the date that that job was supposed to have been committed?

A. No, sir, I do not.

Q. It is my understanding it was either late June 1st [fol. 955] or early June 2nd. Would that refresh your recollection?

A. It could have been.

Q. Where were you the day before the Amphibious job?

A. I don't remember, sir.

Q. Where was Ben?

A. I don't remember that.

Q. Was Christ Sofocleous with you folks?

A. I believe he was.

Q. Is there any doubt in your mind?

A. I believe he was.

Q. Well now, when you left to perpetrate that job, what time was it, if you know, that you went to the Amphibious Base, and just who was present?

A. I don't remember, sir.

Q. You do not know who was with you on that Amphibious job?

A. Yes, sir.

Q. Just tell us whom you went with.

A. You mean who the job was pulled by or who went with us to the place?

Q. Just tell whom the job was pulled by, yes.

A. Bennie Guerrieri, Christ Sofocleous.

Q. Sofocleous?

A. Virginia and Mike Milanovich.

[fol. 956] Q. There is no question about that?

A. To the best of my knowledge.

Q. Now, what time was it, if you know?

A. I do not remember, sir.

Q. I invite your attention again to the statement made by you on June 26th in Norfolk, Virginia, to some agents, and ask you to refresh your recollection by reading that paragraph.

A. All right, sir.

Q. Now, has that refreshed your recollection?

A. Yes, sir.

Q. In that statement you say it was just—let me look at it to be certain—but, as I recall it, "Ben—" —and I am quoting now and quoting in part, and you can—I will read it all, if you want me to.

A. All right.

Q. But I want to pick it up with where the people were that left with you. "Ben, Virginia, Mike and I sat around the house that night and about 10:30 p.m. Virginia and Mike

drove Ben and I to the Little Creek Amphibious Base and dropped us off at the back door of the Commissary." There is no mention of Christ here at all, is there?

A. No, sir.

Q. You were not under oath then?

A. Pardon?

[fol. 957] Q. I say you were not under oath when you gave this statement?

A. No, sir.

Q. And did you leave out part or were you just misleading the agents, or what?

A. I wasn't misleading. I never named his name.

Q. You never named whose name?

A. Christ Sofocleous.

Q. You never did at any time?

A. No, sir.

Q. All right. Here is another communication, and look at that and refresh your recollection of whether or not there was any conversation regarding Christ. Did that refresh your recollection?

A. Yes, sir.

Q. And I want to read to you, in part—

A. Yes, sir.

Q. This is dated 8/18/58, dictated on 7/30/58, Special Agent Anderson, I believe: "On July 30, 1958, Clayton Thomas Grimmer was interviewed at the Norfolk City Jail and advised that he could furnish no further information regarding the burglaries of the Navy Base Exchange and the Amphibious Base Commissary. However, he stated he, Ben Guerrieri and Christ Sofocleous split the currency three ways." Did you tell that to the agents?

[fol. 958] A. I do not remember that, sir.

Q. "Which currency they had obtained from the burglary of the Amphibious Base Commissary Store. He advised that each share amounted to approximately \$3,500.00 and that Christ flew to Youngstown from Norfolk after he and Ben left Norfolk following this burglary." Did you make that statement?

A. There was some conversation about it. I don't remember making that statement.

Q. There is no mention at all of Mike and Virginia getting any split out of that job, is there?

A. Well, I don't remember, sir.

Q. Well, take a look at it.

A. I know what's on there, sir.

Q. You remember making this statement, do you not?

A. I don't remember making that statement.

Q. Do you deny making that statement?

A. I suppose I would have to.

Q. Of course, you were not under oath then?

A. That is correct, sir.

Q. Let's see. "And that Christ flew to Youngstown from Norfolk after he and Ben left Norfolk following this burglary. Grimmer still maintained that his share of the money from the burglaries was applied toward fixing the local charges against him in Youngstown, Ohio." What do you remember about saying that?

[fol. 959] A. I don't remember saying that.

Q. Now, was Sofocleous involved in the Naval Exchange theft?

A. No, sir.

Q. Did you ever tell the F. B. I. anything at all that would lead them to believe that he was involved?

A. I don't believe I did, sir.

Q. Do you want to read this second paragraph of this statement?

A. I already read that, sir.

Q. All right. See if this refreshes your recollection. "Grimmer stated that his accounting of the burglaries as previously furnished was exactly the manner in which they were accomplished. He implied that Sofocleous was in on both burglaries but stated that he did not want to furnish a signed statement or testify against Sofocleous concerning his participation." Did you say anything to this agent that would lead him to believe that Sofocleous was involved in both jobs?

A. I don't believe I did, sir.

Q. And do you say that is not a correct interpretation of your statements?

A. I would say that it isn't. I don't remember saying it.

Q. You deny making these statements?

[fol. 960] A. Yes, sir.

Q. Now, after you all arrived, and I am on the Amphibious job now—

A. All right.

Q. —you recall the time mentioned in the 26th statement was approximately 10:30. Would that be about right? Does that refresh your recollection?

A. When we left to go there?

Q. Yes.

A. Approximately, yes, sir.

Q. And I take it it was you and Bennie and Virginia and Mike and, of course, Christ, he happened to be along?

A. Yes, sir.

Q. Was anybody else along?

A. I don't remember, sir. I don't believe there was.

Q. But there is no question about Virginia and Mike being there?

A. No, sir.

Q. And this was approximately at 10:30 in the evening?

A. I believe so. I don't remember the time.

Q. Now, you are sure that there was nobody else involved?

A. I'm not sure, sir, no, sir. I don't remember.

[fol. 961] Q. Do you have any idea about how long it took for you and your associates to complete this job?

A. No, sir, I do not.

Q. Was it daylight when you all finished and left?

A. I believe it was breaking day, sir.

Q. Pardon?

A. I believe it was breaking day.

Q. I cannot hear you, I am sorry.

A. I believe it was breaking day.

The Court: Breaking day.

By Mr. Koutoulakos:

*Q. Oh, I see. And how did you all leave after you finished your job?

A. Through the woods, got to the fence, crawled through a hole underneath the fence.

Q. Now, what did you do with the money?

A. The money was left on the Base.

Q. All of it?

A. Yes, sir.

Q. That is the currency?

A. Everything, sir.

Q. Everything, no question about that?

A. No question about that.

Q. Let me find that 26th statement. And then you did not get any of it or anybody else that night?

A. No, sir.

[fol. 962] Q. And if anybody says that it was split up that evening, they are just plain wrong?

A. I would say so, sir.

Q. Well, you were there, you know.

A. Well, yes, sir.

Mr. Parsons: I do not recall any testimony to that effect.

Mr. Koutoulakos: What?

Mr. Parsons: I do not recall any testimony to that effect on that robbery.

Mr. Koutoulakos: Well, the jury will recall whether anything was said like that or not.

By Mr. Koutoulakos:

Q. Then who picked you up?

A. I believe we had a prearranged pickup.

Q. My question was, who did it? Who picked you up?

A. Virginia Milanovich and Millie Gauger.

Q. You are sure of that?

A. I believe so, sir.

Q. You now say Millie Gauger and Virginia Milanovich?

A. I believe so, sir.

Q. You are certain of that?

A. Yes, sir.

Q. Have you seen Ben Guerrieri recently? Have you [fol. 963] talked to him?

A. We are in the same jail.

Q. Are you able to communicate with each other?

A. Partially, yes, sir.

Q. What means of communication have you used?

A. We have only talked since we have been over here and being transported back to the jail.

Q. Have you discussed your case?

A. Somewhat, yes, sir.

Q. Somewhat? And the conversation, is that the only means of communication you have had in that jail?

A. We did write some notes.

Q. Do you have the notes that he sent you?

A. No, sir.

Q. How many notes were there?

A. I do not recall, sir.

Q. How would they be transported to him and how would his notes be transported to you?

A. Through the guards working on the jail.

Q. There was that means of communication in addition to your oral conversation—

A. Yes, sir.

Q. —regarding this case?

A. Yes, sir.

Q. Since this case has started have you and Mr. Guerrieri [fol. 964] seen fit to discuss this matter with each other?

A. Somewhat, yes, sir.

Q. And since this case has started have you seen fit to discuss this case with anybody else? And I do not mean any attorneys.

A. Who do you mean, sir?

Q. Have you talked this case over with anybody else, your wife, Christ, anybody but attorneys or special agents?

The Court: He said he talked to his wife.

Mr. Koutoulakos: Well, I am talking about this case.

The Court: Yes, he said he talked to his wife.

Mr. Koutoulakos: I did not hear him.

A. I remember talking to my wife about it, naturally.

By Mr. Koutoulakos:

Q. About this case?

A. Yes, sir.

Q. And the evidence?

A. Yes, sir.

Q. I am sorry, I just did not hear you say it. Did there come a time when you say that that money was hidden, that is, the currency?

A. Yes, sir.

[fol. 965] Q. Did there come a time when you recovered that money?

A. No, sir.

Q. Pardon?

A. No, sir.

Q. You have never gotten that money?

A. No, sir.

Q. You are sure of that now?

A. Quite sure.

Q. So then you had no money to split on this Amphibious job?

A. That is correct, sir.

Q. No question about that?

A. No question about that.

Q. Do you know whether or not Mike and Virginia, from your side of the story, got any money from this job?

A. I don't know, sir.

Q. Just take a look at this and refresh your recollection, please. Start with that.

A. I read this, sir.

Q. All right. Let me ask you some questions.

A. All right.

Q. Now, Mr. Witness, you have just testified under oath that you got no money to split?

A. Yes, sir.

[fol. 966] Q. Did you or did you not make this statement to the agents of the Federal Bureau of Investigation, and I am referring to the Commissary job, the Amphibious Base—

A. Yes, sir.

Q. —“After we got off the base, Ben and I met Mike and Virginia at a prearranged location, and they drove us to their home. We told them that we were unable to get into the safes and didn't get any money.” Did you make that statement?

A. Yes, sir.

Q. “Ben and I hid the currency in a satchel at the fence where we crawled out. We were able to get away from Mike

and Virginia the next day. Ben and I split the money and flew back to Youngstown, Ohio via Capital airlines."

A. Yes, sir.

Q. Well, you have just told the Court that you took no money at all. Now in this statement you did tell the agents that you and Bennie split the money.

A. I told the agents that, yes, sir.

Q. And in this statement you also say that it was Mike and Virginia that met you at a prearranged location. Now you are saying it was Virginia and Millie; is that correct?

A. I do not remember distinctly who it was that picked us up. I do know that we were picked up.

[fol. 967] Q. You just made a statement under oath, Mr. Witness, that it was Virginia and Millie?

A. I believe it was.

Q. Now you say you do not know?

A. I believe it was Virginia and Millie.

Q. At the time you talked to the agents, when this was given, you said it was Virginia and Mike.

A. I believe I made that statement, sir, if you say it is in the statement.

Q. Not if I say it. Take a look at it and see if it is in there.

A. If it is on there, I made it.

The Court: All right, Mr. Koutoulakos.

Mr. Koutoulakos: Yes, sir, I want to see if there are any more statements, your Honor.

By Mr. Koutoulakos:

Q. Now, during these interrogations by the agents of the Federal Bureau of Investigation, the recent ones, I believe you testified that on the first two occasions you made no statement at all one way or the other regarding the final statement, I believe you said that?

A. You mean up here?

Q. Yes, sir.

A. Yes, sir.

[fol. 968] Q. Now, Mr. Grimmer, have you been convicted of any felonies? And do you know what a felony is?

A. Yes, sir, I understand.

Q. Have you been convicted of any?

A. Yes, sir.

Q. And what are they?

A Mr. Parsons: I do not believe that that question is proper. The proper question is if he had been convicted of a felony, and if he says, yes—

The Court: I do not think it makes much difference.

Mr. Koutoulakos: No, it does not.

The Court: The answer is, he has been convicted of felonies prior to this, one or more felonies prior to this.

Mr. Koutoulakos: Your Honor, I believe I may be finished, if you will bear with me a minute.

By Mr. Koutoulakos:

Q. Now, Mr. Witness, shortly after your arrest, did there come a time when you had a visit in jail—and I assume it was in the Norfolk Jail. This is before your statement of the 26th and your subsequent statements—by Attorney Davis, seated at this table?

[fol. 969] A. Yes, sir.

Q. Was there anybody else there?

A. I believe Virginia came down at one time. I am not sure.

Q. At that time did you or did you not say that if they could raise the bond to get you out on the streets so you could be with your wife for a period of approximately two weeks you would tell the truth in this matter and exonerate these people, and did you not give such a statement to Mr. Davis, and when they could not raise the bond, you got the statement back? Do you deny that?

A. I do not remember making that statement, no, sir.

Q. Do you deny making it?

A. I do, yes, sir.

Q. Absolutely?

A. He had a slip of paper this long (indicating), and he had approximately five sentences on it, and it was already written out stating that my signature at the bottom would clear them completely. That's the piece of paper that he had and that's all that was to the statement.

Q. I put it to you, you signed such a statement? Now, deny it.

A. I did.

Q. You did sign it?

[fol. 970] A. Yes, sir.

Q. And that was because you wanted bond money to get out on the streets; is that right?

A. That was one of my reasons.

Q. And when the bond was not furnished you tore it up?

A. He gave it back to me and I tore it up.

Q. And that statement exonerated them completely?

A. I wouldn't say so, sir.

Q. You would say so?

A. I wouldn't say so.

Q. No further questions. Do you have that statement?

A. No, sir. It was torn up.

Q. You tore it up?

A. Yes, sir.

Mr. Koutoulakos: No further questions.

The Court: Anything further, Mr. Parsons, of this witness?

Mr. Parsons: May I have just one moment, your Honor?

Redirect examination.

By Mr. Parsons:

Q. Mr. Grimmer, the letter that you wrote to me and a copy that went to them or the copy that went to them [fol. 971] and you sent me a copy, which is in evidence, I believe you said the first two times you talked about this letter that you made no comment on it; is that correct?

A. That is correct.

Q. And the third time you stated to the agent—what did you tell the agents the third time about the letter?

A. I gave the agent the reason for writing this letter.

Q. And those reasons are as you already stated?

A. Yes, sir.

Q. Are those allegations correct or incorrect in that letter, Mr. Grimmer?

A. In this letter?

Q. Yes, sir.

A. They are false.

Mr. Parsons: Thank you. That is all.

The Court: Nothing further! All right, Mr. Grimmer, you may stand down.

Mr. Parsons: The Government rests, your Honor.

The Court: All right. At this stage we will take a brief [fol. 972] recess, Members of the jury. You may step out.

(The jury retired to the jury room at 10:45 a.m.)

(Discussion off the record.)

PROCEEDINGS OUT OF THE PRESENCE OF THE JURY

The Court: Let the record indicate that defense counsel made a motion for a judgment of acquittal as to each of the counts and as to each of the defendants named in the indictment and the Court overruled the motion.

Any other motions you want to make, gentlemen?

Mr. Koutoulakos: Your Honor, not only the motion of acquittal, but at this time we make a motion to at least dismiss either the receiving charges or the larceny charges since they are inconsistent and certainly they cannot be convicted of both under the evidence that is to be believed at this stage of the proceedings.

The Court: Motion denied.

Mr. Koutoulakos: Your Honor, could we have a few minutes?

VIRGINIA MILANOVICH, called as a witness by and on her own behalf, having been duly sworn, testified as follows:

[fol. 980] Direct examination.

By Mr. Davis:

Q. Will you state your name.

A. Virginia Milanovich.

Q. Speak up loudly and clearly.

A. Virginia Milanovich.

Q. Where do you live?

A. 8032 Webb Court.

Q. Are you married to Mike Milanovich, who is also a defendant in this case?

A. I am.

Q. When and where were you married?

A. '52, in North Carolina.

Mr. Davis: If your Honor please, I would like, at this time, to advise the witness that it is not necessary for her to testify for or against her husband, but if she does so, that he does not object.

The Court: That is correct, unless there is an objection from the defendant Mike Milanovich.

[fol. 981] Mr. Koutoulakos: We want the record to clearly show that we have no objection whatsoever, your Honor.

The Court: All right.

By Mr. Davis:

Q. You have seen a parade of witnesses before you, particularly Bennie Guerrieri, Clay Grimmer and Christ Sofocleous. Will you tell the Court and jury when you first met those three individuals?

A. On April the—I met two, Bennie Guerrieri and Clayton Grimmer, on the twelfth day of April of this year.

Q. What was the occasion of that visit at that time?

A. My brother-in-law brought them to Norfolk. It was his birthday.

Q. Who is your brother-in-law?

A. Steve Milanovich.

Q. Had you ever met or seen either of those two individuals, Bennie Guerrieri or Clayton Grimmer, before that time?

A. Never in my life.

Q. Do you know, of your own knowledge, for what reason these two came with Steve Milanovich to the Norfolk area?

Mr. Parsons: If your Honor please, this is his witness [fol. 982] and, of course, I think he should confine himself to direct questions rather than leading questions.

The Court: Well, if these two witnesses, Mr. Parsons, had made statements to this defendant, would that not be admissible for that purpose, for the purpose of contradiction?

Mr. Parsons: Oh, yes, I believe that would be admissible, but I think he should not indicate the answers by his questions. That is my point, your Honor.

The Court: I do not remember that he indicated the answer, but I will permit the question.

Mr. Davis: Will you read the question.

(The pending question was read.)

A. Only what they said.

By Mr. Davis:

Q. And what was that?

A. We didn't know Steve was coming. We hadn't seen him on a long time. They knocked on the door and asked who was there. Steve Milanovich was at the door with these two gentlemen. I invited them in. My husband had not got home from work and we had made plans to go out, [fol. 983] and when my husband came home, naturally—courtesy—we invited the three men to go with us.

Q. And where did you go?

A. To the Chief's Club at N. A. S.

Q. Did anything unusual happen at that time?

A. Well, it was Steve's birthday and they announced it on the mike so all of Mike's friends could meet him. Mike was the president of the Club and they thought it was a courtesy to him.

Q. Mike is the president of what club?

A. The N. A. S. Chief's Club in Norfolk, Virginia.

Q. How long has he held that position?

A. That I cannot answer.

Q. After the party did any of those people, Steve Milanovich, Bennie Guerrieri or Clay Grimmer, spend the night at your home?

A. Steve Milanovich did.

Q. He alone?

A. No, Millie Gauger.

Q. She spent the night at your house as well?

A. Yes, she did.

Q. Did you, the next day, see either of those other two individuals that were with you the previous evening, Bennie Guerrieri and Clay Grimmer?

A. I did.

[fol. 984] Q. And what was the occasion for that?

A. We had a barbecue in the back yard and I invited thirty couples over in honor of Mike's brother, and they came to the party and stayed till about eight o'clock and left.

Q. What day of the week was this, do you remember?

A. Yes, it was on a Sunday.

Q. And do you remember the date?

A. Yes, the 13th of April.

Q. And you remember that date how?

A. Because of Steve's birthday, the day before, the 12th.

Q. After the party did Bennie Guerrieri, Clayton Grimmer and Steve Milanovich remain at your home?

A. Steve Milanovich did. Clayton Grimmer left with a girl by the name of Scotty and Bennie left in his own car, went back to his motel.

Q. When did you next see him?

A. I will say maybe anywhere from six to ten days later.

Q. Now, the first occasion, when you met them on April 12th, do you know how the three individuals came to Norfolk?

A. Yes, they came down in Bennie Guerrieri's car.

Q. Do you remember the type of car?

[fol. 985] A. It was an old car, and I can't tell you what it was.

Q. The next time they came to Norfolk, do you know how they arrived?

A. They came down in a '53 black Buick.

Q. Did they remain at your home that time?

A. They did not.

[fol. 990] Q. When did you next see Bennie and Clay?

A. The last part of May. I think it was sometime around the holiday, but I'm not positive.

Q. Did you, at any time, discuss, plan or talk these people or any other people into making any such robberies or

breakins of any Government installation in the Norfolk area?

A. I am not that low.

Q. I ask you, did you do it?

A. No, sir, I did not.

Q. You have heard it so testified that the Little Creek Amphibious Base Commissary was broken into sometime during the night of June 1st or the early morning hours of June 2nd. Did you participate in that breakin in any way?

A. No, sir.

Q. Did you, in the company of anyone, meet and pick [fol. 991] up Bennie or Clay in the early morning hours of June 2nd in the vicinity of the Little Creek Amphibious Base?

A. I did not.

Q. Did you, on the day of June 2, 1958, see either Bennie Guerriero or Clayton Grimmer?

A. You are talking about the next day?

Q. June 2nd.

Mr. Parsons: June 2nd, thank you.

By Mr. Davis:

Q. June 2nd.

A. I saw Bennie. I did not see Clay.

Q. At what time did you see Bennie?

A. I think around 3:30 in the afternoon.

Q. Was—

A. It could be four o'clock.

Q. Was anyone with him at that time?

A. Millie Gauger.

Q. What did you do, if you did anything, in particular on that afternoon?

A. Well, Mike and I had planned to go fishing, and when they pulled up, we invited them to go with us.

Q. And where were you planning to go fishing?

A. Well, we generally go down at the bridge, that Lynnhaven Bridge, sometime between—just different places.

Q. All right. On the afternoon of June 2nd did you go fishing?

[fol. 992] A. No, we didn't, because when we got on the Shore Drive—we got close to it—I don't know if it was—who suggested it, whether it was Mike or not—somebody was talking about all the robbery, everybody was talking about it and, truthfully, laughing about the robberies. I said, "Just go and see what it's all about."

Q. You said you were laughing about it?

A. No, I said everyone was talking about it, giving—just remark was made, "Give me my end," a joke; in other words, no one dreamed that anybody in that car knew anything about it.

Q. To your knowledge, did anyone know anything about it?

A. At that particular time, definitely no. I'd never go near that Base if I had thought that.

Q. Did Bennie Guerrieri and Clayton Grimmer spend Sunday night, June 1st, through the 2nd, that is, the evening of June 1 and the early morning hours, Monday morning, June 2nd, at your house?

A. He—either one of them did not.

Q. Did either one of them spend Monday evening and the early morning hours of Tuesday in your home?

A. They did not.

Q. Do you know how or if they did and when they left the Norfolk area?

[fol. 993] A. I do not.

Q. When did you next see either Bennie Guerrieri or Clay Grimmer?

A. I saw Clay Grimmer on the—I think the 17th of June.

Q. Do you know how he arrived in the Norfolk area?

A. Yes, he came by plane.

Q. And how did you happen to see him at that time?

A. I went out to the airport.

Q. And why did you go to the airport to meet him?

A. Wanted to discuss opening up a garage here in Norfolk.

Q. How did you know that he was arriving at the airport?

A. He called us when he got to the airport.

Q. Did you know before he landed at the Norfolk airport that he was on his way to Norfolk?

A. Yes, I did.

Q. You knew that he was planning to come down?

A. Yes.

Q. And you speak of this business. What business is this that he was talking about going into?

A. The garage business.

Q. Had it been previously discussed?

A. Yes.

[fol. 994] Q. And who was going into this particular business?

A. Mr. Guerrieri and Mr. Clayton Grimmer was going to finance it and Mr. Wallace Carson and my husband was going to share in half of the profits.

Q. What was to be your part in this garage business?

A. Not any whatsoever, just—

Q. Well, why were you to share in the profits?

A. I said my husband and Mr. Wallace Carson was to share in the profits.

Q. You were not to receive any of the proceeds directly?

A. No, sirree, I have enough to do at home.

Q. You mentioned the name of Wallace—what is his middle initial?

A. D.

Q. D. Carson. Who is he?

A. He is a very good friend and a neighbor of ours.

Q. How long have you known him?

A. I'd say roughly between five and six years.

Q. Where does he live?

A. At that particular time he lived at 8028 Webb Court.

Q. How long have you lived at your address of 8032 Webb Court?

A. Three years this past September.

[fol. 995] Q. When you moved to the area was Mr. Carson living next door?

A. No, he was not.

Q. He came to 8028 Webb Court after you moved—

A. That's right.

Q. —in the area?

A. That is correct.

Q. At that particular time, now, on—was it June—what date did you say?

A. I think it was the 17th.

Q. 17th. Did Mr. Clayton Grimmer stay at your home?

A. I beg your pardon?

Q. Did Clayton Grimmer, that is the person you met at the airport—

A. Yes.

Q. —where did he stay?

A. On that night? I have no idea.

Q. When did you next see him?

A. The next day.

Q. What was the occasion of that meeting?

A. There was no occasion at all. He dropped by around—I guess around twelve or one o'clock in the daytime.

Q. When did he first disclose to you that he had any quantity of currency, silver, currency?

[fol. 996] A. About seven o'clock that night Clayton Grimmer got a case of beer, paid for it. I don't drink a whole lot. Millie, Clay, myself sat there and got a couple of beers.

Q. Where was your husband at that time?

A. The Navy was giving a party and he was at the Ship's party.

Q. All right, go ahead.

A. Millie had been trying to get, every time, you know, a television. She had had one, but she had lost it about a month before this. She asked Clay Grimmer to lend her some money to buy it. He told her, if he had as much as \$500.00 to go home with, he would lend her the difference to buy a television set. That is the first time that I seen any money.

Q. In what type of container did Mr. Clayton Grimmer have this currency?

A. He had it in a bag inside of a suitcase.

Q. What type of suitcase? Do you see it here?

A. It was not this one. It's one just-like it.

Q. And do you point to—

A. This one right here.

Q. The one I am now holding?

A. That's right.

Q. Government's Exhibit No. 67?

A. That is correct.

[fol. 997] Q. He removed the money from there, which was in a paper bag, you say?

A. That's right.

Q. Who counted the money out?

A. First Clay counted it out and then about an hour later he wanted it to be recounted, because he thought he gave Millie more than he intended to give her, so then Millie counted it over again on the kitchen table. Millie Gauger asked me—she started putting the bag in a paper bag—she asked me if I would lend her a weekend bag and she would bring it back to me the following day.

Q. I show you this weekend or cosmetic bag which is marked Government's Exhibit No. 60, and ask you if this is the bag you have reference to?

A. That is right.

Q. What did you do with the bag? Did you give it to Millie?

A. I did not give it to her. I merely lent it to her, because Clay called his wife long distance, charged it to her phone and told her that he was coming in, and if he could, he was going to try to bring a friend with him.

Q. And what did Millie do with the proceeds of the money that was counted out to her?

A. She put it back into that white suitcase.

Q. And do you know where that suitcase was placed?
[fol. 998] A. She put it in the dining room closet with her pocketbook and her—whatever she had.

Q. All right. Then what else happened that evening?

A. Well, Clay was supposed to pick up—Scotty was supposed to pick Clay up in her car. Around twelve o'clock Millie and Clay, not doing anything wrong, but they were setting on the couch and they were setting, probably, close—Scotty drove up and she saw it. She turned around and drove away. So then Millie, Clay and myself started playing three-handed pinochle.

Q. When did your husband arrive home that evening?

A. Oh, I will say in the neighborhood of between 1:30 and two o'clock in the morning.

Q. To your knowledge, do you know whether or not he knew or expected to find anyone at the home other than you?

A. No, he did not.

Mr. Parsons: We are still talking about the night of June 17th?

Mr. Davis: 18th.

Mr. Parsons: 18th.

By Mr. Davis:

Q. The night the money was counted out?

A. That's right.

Q. Did he make any comments or show any evidence [fol. 999] of surprise or unconcern when he saw who was there?

Mr. Parsons: Just ask her what he did, do not implicate what he should have done.

A. Well, the truth of the matter is, when he came in, he was pretty well tight, and when he saw Clay, he shook hands with him and he said, "What are you people doing?" By that time, Millie and Clay and I, we wanted to call it a night, but he had just enough drink in him to want to play a game of set-back—I mean pinochle partners against Millie and I.

By Mr. Davis:

Q. How late did you play?

A. I would say up till about 3:30 in the morning.

Q. And then what did you do?

A. I cooked Mike and Clay some eggs, then I went to bed.

Mr. Parsons: I'm sorry, I did not understand what she said.

A. I cooked some breakfast for Clay and my husband.

By Mr. Davis:

Q. And what hour was this?

A. I will say close to 3:30, quarter to four.

Q. And then you went to bed?

A. Yes, sir.

Q. Do you know when Mike came to bed, if he did?

A. Oh, yes, him and I both went right straight to bed. [fol. 1000] I fixed the couch in the living room for Clay to sleep on, because at that time he was so drunk he could not have got on the plane, and Millie went in the back bed-

room and went to bed. I only have a bungalow with two bedrooms.

Q. Were you awakened that morning?

A. Yes, I was. I don't know what time it was. The alarm clock had just gone off and Mike, as usual, he don't want to get up, and that morning, on account of drinking so much and this couple hours of sleep, it was hard getting him up. Someone knocked on the front door with a knocker and they hollered, "This is the F. B. I.," to open the door, and Mike jumped up out of the bed and flew and opened the door.

Q. And then what happened?

A. They says, "Mike Milanovich, you are under arrest for \$13,000.00 robbery."

Q. Did they only state one robbery at that time?

A. That is all.

Q. How many agents were there at the time, do you remember?

A. Truthfully, to tell the truth, to me, I thought it was a hundred. I don't know how many.

Q. Where were you and Mike when you heard someone say, "You're under arrest"?

A. I was in the bedroom, Mike had got up and answered the door and turned them in and then when they said that, [fol. 1001] I stood in the bedroom because—

Q. When did you join the group—

A. No, sir.

Q. —if you did?

A. I, at no time—Mr. Hugh Smith, Mr. Steffen and that big one, Grumlen—

Q. Mr. Drummond.

A. Yes.

Q. The blackhaired gentleman.

A. Yes, they was in the bedroom with me—or Mr. Smith didn't stay in there all the time, he was going in and out. Mr. Steffen stood in the doorway.

Q. Do you know whether or not, at that time, any particular agent found the containers with the money in it?

A. You mean which agent?

Q. Yes.

A. I could not tell you.

Q. Did you hear any conversation in your presence and in Mike's presence in regard to the money?

A. Are you speaking of Clay's or the white one?

Q. Either or both.

A. The one in the back bedroom, when they found that.

Q. Which one is that?

A. That's the man's bag.

[fol. 1002] Q. That is this bag, Government's Exhibit No. 67?

A. Yes, sir.

Q. Was found in the back bedroom?

A. Yes, sir.

Q. Where, do you know?

A. No, truthfully, I do not know where.

Q. All right, go ahead.

A. I do not know what agent found it, but when they did find it, it was laying on the floor in there somewhere. They asked whose bag it was. At first Clay Grimmer did not say anything. So finally they opened it up. He had all of his identification in there, so then he had to admit it was his.

Q. Did you hear any conversation in regard to this overnight bag, Government's Exhibit No. 60?

A. I did.

Q. What did you hear?

A. As God is my judge, Mr. Smith was standing there. Mr. Steffen, they said, "Whose bag—" —"Virginia, do you have any luggage?" I said, "Yes, I have a three-piece white suiter." He said, "Is this your bag?" I says, "Yes, the bag is mine." He says, "How about the money?" I said, "The money is not mine." He asked me, had I lent the bag to Millie, and I said I had. They called Millie over and asked her, was the bag empty when I lent it to her, and she said, [fol. 1003] yes; it was empty when I lent her the bag.

Q. Did anyone say whose money it was?

A. Millie Gauger admitted that it was hers, that Clay Grimmer had lent it to her.

Q. It was a loan of the money to Millie and not an outright gift?

A. He stretched the point a million times, that he was not giving it to her. She meant nothing to him. He was merely lending it to her and expected to get it back.

Q. Do you have any idea as to where this money came from?

A. I did not.

Q. Did you, on the previous day or on any day previous thereto that morning or that evening when the money was counted out, drive Clay Grimmer to the Amphibious Base, Little Creek Amphibious Base, or any other place to pick up such sums?

A. I drove Clayton Grimmer to a filling station—

Q. I asked you—

A. —in the daytime.

Q. Did you drive him to the Little Creek Amphibious Base?

A. I did not.

Q. Or any other installation to pick up any money?

A. No, sir.

[fol. 1004] Q. And do you know where he got such money?

A. I do not.

Q. Do you know, when you met him at the airport, if he had any particular luggage with him at that time?

A. At that time he did not have his bag.

Q. Do you know where this bag was picked up?

A. No, I do not.

Q. Do you know how this particular bag got into your house?

A. Yes.

Q. How?

A. On the 18th—he came down on the 17th, and on the 18th, around eight or nine o'clock, or maybe earlier, he came to the house and he had the bag and—

Q. How did he get to your house?

A. In a cab.

Q. And that is the first you saw that bag?

A. That's the first I saw that bag.

Q. Now, after the arrest of your husband, the premises were searched, were they not?

A. Even down to the meat in the deep freeze.

Q. Where is your deep freeze?

A. In our storeroom.

Q. What else do you keep in the storeroom?

A. Everything that everybody—lawnmowers, suitcases,

[fol. 1005] trunks, water hose and our tools, or whatever we have—that you ever have around your house.

Q. That is a toolshed?

A. Yes.

Q. And storage space?

A. That's right.

[fol. 1017] Cross examination.

By Mr. Parsons:

Q. Mrs. Milanovich, I believe you stated that your full name, or some of your names are, Virginia Lee Milanovich; is that correct?

A. I did.

Q. And that you are known by some of your friends as Lee; is that correct?

A. That's correct.

Q. And the telephone number that was put into evidence here in the name of Milanovich, that was put in your name and that was your telephone at that time?

A. I had it for a number of years.

Q. Mrs. Milanovich, on the morning that your husband was arrested did you have occasion to talk to any F. B. I. agents?

A. Yes.

Q. Who were the agents that you talked to, if you recall?

A. I think Mr. Smith. I don't know whether—he's the one [fol. 1018] I know that searched the bedroom. I don't know whether him and I had anything to say or not that would have amounted to anything, so I don't know whether I talked to him that morning or not.

Q. Do you recall what you told the agents on that morning?

A. They asked me how, in the name of goodness, did we ever get involved with them, and I tried to explain.

Q. Do you recall telling them you did not recall the exact time that these individuals came to Norfolk, but they had visited Mike Milanovich on several occasions?

A. I am willing to take the lie serum test that I did not, at any time, make that statement.

Q. What kind of test?

A. Any test, that I did not make that statement.

Q. Did not make that statement, all right. Do you recall stating, on one occasion, when they came down here from wherever they came from, that they were driving a '55 or '56 black Oldsmobile or Buick, which was similar to your car?

A. No.

Q. Do you recall telling the agent that you had told Clay Grimmer or Bennie Guerrieri, either or both of them, to take their car to Tubby Lambert's Garage?

A. Bennie Guerrieri's car did get broke down and he [fol. 1019] left it with Scotty to have fixed, and she didn't, and I recommended to them to take it to some garage. I don't know whether I said Tubby Lambert's, or whose.

Q. Now, in there you told them, during that period, you did not see the car for several days; is that correct?

A. I said that when they left there on a Sunday night of the 13th, I never seen them for, at least, from six to ten days later.

Q. Let's go to about the first of June. Did they have a car with them at that time?

A. I couldn't truthfully say that they did or didn't. I don't know.

Q. Why would you tell the agents you did not see the car—

Mr. Koutoulakos: If your Honor please, I do not believe there is any evidence she told the agents anything. He is arguing with the witness. There is nothing to contradict here.

Mr. Parsons: Oh, yes, I can put the agents on.

The Court: Just ask her the question.

By Mr. Parsons:

Q. Did you tell the agents you did not see the car around for several days during that period?

[fol. 1020] A. I never seen them.

Q. Do you recall telling the agents that on the night of June 1st you had a party at your house?

A. Yes.

Q. And did you describe to the agent very carefully who was present at that party?

A. Yes.

Q. You now say that that party was held on a different date than the date you told them, don't you?

A. Wait a minute, wait a minute. I told them we had a party on the 13th of April, and they asked me that they were interested on June 1st. I said, "We didn't have a party. It was only four people at our house."

Q. You now say that you did not tell the agents that you had a party at your house on June 1st, is that what you are saying?

A. I said there were four people on our house at June 1st.

Q. I must warn you, Mrs. Milanovich, that I am going to contradict you.

A. All right.

Mr. Koutoulakos: Your Honor, I do not think that is a proper remark.

The Court: Oh, yes, I think it is proper to warn a witness [fol. 1021] that you going (sic) to contradict or try to contradict. It is necessary for Mr. Parsons to lay a proper foundation before he contradicts. In other words, he should state which agent—

Mr. Koutoulakos: That is right.

The Court: —if he cares to—

Mr. Parsons: Mr. Steffen.

The Court: —and when this conversation was alleged to have taken place, which I think was on June 19th, or thereabouts, right after the search, I assume.

Mr. Parsons: Yes, sir.

Mr. Koutoulakos: Has she been contradicted by a written statement? Under the defense rules, she has to be given a copy of it to refresh her recollection.

Mr. Parsons: This is not a written statement.

Mr. Koutoulakos: If it is oral, then he should further lay a foundation as to time and place and who it was.

The Court: He is laying that foundation.

Mr. Parsons: I did, the morning Mr. Milanovich was arrested.

The Court: The only thing he did not mention was the [fol. 1022] agent's name.

Mr. Parsons: And the agent was Marvin E. Steffen.

By Mr. Parsons:

Q. You recall talking to him?

A. Yes, I did.

Q. All right. Didn't you tell him at that time that at that party there was a chief named Furey and his wife?

A. Later I found out that it was Miss Furey and not Mr. Furey, but that was on the 13th of April.

Q. I am talking about what you told them on June—about the people present at your house on June 1st.

A. No, I did not.

Q. You did not, you deny that?

A. Yes, I do.

Q. And you deny that you told them that Mr. Peele and his wife and Mr. Otts and his wife, a man named Bill Picot and Miss Pat Dietrich were all present in your home on the night of June 1st?

A. I said on April 13th.

Q. You deny you told the agent June 1st?

A. Yes, I do.

Q. All right. Now, do you recall telling the agent that on the night of June 1st that Bennie Guerrieri and Clayton Grimmer took Mike's car to get some beer?

[fol. 1023] A. Any what?

Q. Do you recall telling the agents that on that same night, that was the party, that Ben Guerrieri and Clayton Grimmer took Mike's car and went to get some beer?

A. Mike's car was at the Madden house all day long.

Q. Mike's car was at the Madden's house all day long? I am talking about the first of June.

A. That's right.

Q. I am talking about the evening of the party.

A. I didn't say "party".

Mr. Koutoulakos: I do not think he is being fair with the witness. He is just generalizing and hoping he can fish something out of the stream. Let him relate the time.

The Court: I understand it is related to whatever she may have said to Agent Marvin Steffen on June 19th fol-

lowing the arrest of Mr. Milanovich and Grimmer and relating to the events of June 1st, that is, the night of June 1st.

Mr. Koutoulakos: Yes, sir, but that is a twenty-four hour period. If they could establish the time—

Mr. Parsons: I will establish the time, between approximately [fol. 1024] one o'clock until about 2:30 or 2:35 that day.

By Mr. Parsons:

Q. Now, do you deny again saying that on that day that Bennie Guerrieri and Clayton Grimmer took Mike's car and went out to the Food Fair the night of that party to get some more beer?

A. Yes, I do deny it.

Q. You deny that?

The Court: Are you talking about one o'clock or 2:30—I assume you mean in the daytime, when the sun was shining?

Mr. Parsons: In the daytime of June 19th, your Honor, 1:00 p.m. on 6/19/58.

A. Are you talking about June or talking about June 1st—

By Mr. Parsons:

Q. I do not know what you are talking about. I am talking about what you told the agents.

A. What date are you talking about?

Q. We are talking here about what you told them occurred on June 1st.

A. Well, then I still say I did not see them on June 1st.

Q. No, I did not say you saw the agent on June 1st, [fol. 1025] A. I did not see Bennie Guerrieri or Clayton Grimmer.

Q. You did not see them?

A. I did not see either one of them.

Q. All right. Now, after they returned, do you recall telling the agents that on June 1st they asked Mike if they could use his car and he gave them the keys?

A. No, I do not.

Q. You deny that you said that?

A. That's right.

Q. Do you deny that you told the agents that they told Mike they wanted to use the car to go and change clothes?

A. I did not tell the agents any of what you are saying.

Q. Do you deny that you told them that Mike had been drinking quite a bit and laid down on the sofa and that he had nearly passed out when he had loaned them the car?

A. I remember telling that Mike had been drinking heavily, but I did not say he passed out and I did not say that he lent them his car.

Q. Do you recall telling the agents that you did not then see the car until the next morning?

A. I did not tell the agents nothing like that.

Q. Do you recall telling the agents that when you next saw the car, that the car was returned in a very dirty condition and it smelled like fermenting mash?

[fol. 1026] A. No, I did not.

Q. You deny that, all right. Do you recall telling the agents that following the arrest of your husband that you had contacted the residence of Bennie Guerrieri in Youngstown, Ohio?

A. They were setting there when I contacted them.

Q. Whom did you ask to talk to?

A. I—I asked who was speaking. They said it was Miss Guerrieri, and I asked her, how could I locate Clay Grimmer's wife, and I told her what had happened. I left my 'phone number, which she already had. I told her to get hold of Mrs. Grimmer and for Mrs. Grimmer to call me back.

Q. You told her?

A. Yes, sir, Mrs. Bennie Guerrieri.

Q. Do you recall that you told the agents that you talked to some man, probably Ben's brother Mario Guerrieri, on that 'phone call?

A. I did talk to Mario's brother, which is the bondsman.

Q. You did not tell them about talking to anybody else, did you?

A. I beg your pardon?

Q. You did not tell them about talking to anybody else?

A. They were sitting right there at the table with me.

[fol. 1027] They could hear everything I was saying. I didn't have to tell them nothing.

Q. Do you recall telling them why, on this occasion, you called Ben Guerrieri at that time?

A. I think—in fact, Mr. Steffen was surprised that I knew a man like Bennie Guerrieri, and I tried to explain to him that he was a bondsman from Youngstown, Ohio, and we had worked through him trying to get Steve Milanovich out on bond.

Q. Mr. Steffen's notes indicate that you said that you called Ben Guerrieri because it appeared to you at that time—

Mr. Koutoulakos: Now, your Honor, he is testifying.

The Court: Yes, objection sustained.

Mr. Parsons: All right, sir.

By Mr. Parsons:

Q. Do you recall telling Mr. Steffen that it appeared to you that Ben Guerrieri, Clayton Grimmer and Ben, last name unknown, were involved in the safe burglaries with which your husband was involved?

A. I said what?

Q. Do you recall telling Mr. Steffen that you called Ben Guerrieri because it appeared to you that Ben Guerrieri, Clayton Grimmer and Ben, last name unknown, were involved in the safe burglaries with which your husband was involved?

A. So help me God, I did not make that statement.

Q. Do you recall telling Mr. Steffen that you told the person "she talked to—"—and I am referring to the telephone call you made to Bennie Guerrieri's home—that somebody had better get Mike clear or somebody was going to get hurt?

A. No, I did not.

Q. You deny that statement?

A. That's the same morning they locked Mike up?

Q. This is between 1:00 and 2:30 p.m. on the day that Mr. Milanovich was arrested?

A. Between 1:00 and 2:00 p.m. I was in the courthouse, Mr. Parsons, with Mr. Davis.

Q. Between 1:00 p.m. and 2:35 p.m.?

A. Yes.

Q. You deny that you were even present?

A. I deny making any statement like that at all to Mr. Steffen.

Q. All right.

A. I will admit that I was upset and I said I was going to clear my husband because he was not guilty; a man with nineteen years in the Service wouldn't be that stupid. I did make that—that statement, but I did not threaten [fol. 1029] anybody. Probably they may say something, but you don't mean it, the way things will be turned around.

Q. Do you recall stating that it was not possible that Mike had been in the Little Creek burglary because he was passed out on the sofa?

A. I didn't say he passed out. I said Mike had been over to the Madden's drinking that day. They had shared some forty-ounce bottles, and when he came home—I don't know what time he came home—I guess early—and about eight o'clock a friend of ours came over with a case of beer and we—not "we"—I don't drink. Mike and the two men—

Q. You now deny Mike was passed out on the sofa?

A. I certainly do deny it.

Q. You do deny it. Do you recall stating that some tools had been stolen from the shed?

A. No, I do not deny that. I said that when the agents came in the house.

Q. All right. Why did you say that when the agents came in the house?

A. The minute Mr. Steffen got me aside, he wanted to know why Mike and I were involved with people like that, and he is the one that told me—I said, "You know Mike couldn't do nothing like that." He said, "I got five hardware stores that says that he did."

Q. Why did you then, at that particular time, if Mr. [fol. 1030] Milanovich was not involved, take it upon yourself to make any statement about tools at all, Mrs. Milanovich?

A. Because Mr. Steffen told me that you people had tools that you were going to say came from Mike.

Q. You say Mr. Steffen told you about the tools?

A. That's right.

Q. Now, I call your attention to the morning of 6/19/58, about 8:45 to 9:50 a.m. that same morning, and again Mr. Steffen, and I ask you if you made these comments to Mr. Steffen—

A. Yes, sir, I never saw Mr. Steffen that one time and that was that morning and he left the house around 10:30 or eleven o'clock.

Q. All right. You did not see Mr. Steffen—

A. After that.

Q. —after that day?

A. I did not. I didn't see him until we walked in this courthouse Monday.

Q. On that morning when you did see Mr. Steffen, do you recall a conversation that you had with him that morning?

Mr. Koutoulakos: What morning is this?

Mr. Parsons: This is the same morning, 8:45 to 9:50 a.m.

[fol. 1031] A. The morning that they locked Mike up?

By Mr. Parsons:

Q. Yes, ma'am.

A. That is the morning you are speaking of?

Q. Yes, ma'am.

A. Truthfully, not too much. I was too upset to remember what I said.

Q. And did you state at that time that Bennie, whom you identified as Ben Guerrieri—how do you happen to call them Bennie and Clay all the time, if you only saw them so seldom?

Mr. Koutoulakos: Your Honor, wait a minute. He is limited to cross-examination. What does he mean by calling them "Bennie and Clay all the time"? What time, when she was talking to the agent? It was a short time.

Mr. Parsons: I am talking about right on the stand here today.

The Witness: I never seen these two lawyers until two weeks ago and I call them Paul and Louis.

Mr. Koutoulakos: Your Honor, wait a minute. I do not see anything wrong with her calling them Clay and Bennie.

The Court: There is nothing wrong with her answering [fol. 1032] the question.

Mr. Koutoulakos: I do not see any purpose in the question.

The Court: I think there probably are a lot of irrelevant questions that have been asked perhaps on both sides thus far. One or two more will not make much difference. You may ask the question.

A. I met them and we went to a party with about twelve people. You don't go around saying Mr. and Mrs. at a party.

By Mr. Parsons:

Q. Do you recall that you did not remember Bennie Guerrieri's last name at the time you talked to Mr. Steffen that morning?

A. Definitely I never made that statement, because it was Bennie Guerrieri and his brother that were trying to get Steve Milanovich out of jail on bond. They worked for a bonding company in Youngstown, Ohio.

Q. Do you recall at this time telling Mr. Steffen that these three individuals, whom you identified as Clay Grimmer and Bennie Guerrieri and another man, had come to Norfolk on two or three occasions later and that they had borrowed Mike Milanovich's car several times?

A. I told Mr. Steffen that I met the two men with my [fol. 1033] brother-in-law on the 12th day of April. Steve Milanovich came down here. They had been drinking and they just piled in the car. There was nothing planned. We hadn't seen Steve in three or four years, and it was just one of those things.

Q. Do you recall stating that on one occasion, when they returned the car, that it was dirty and you had to clean it?

A. I don't know if Mike lent the car to them or not. That's something I could not state, but I will say this much

—I have to clean it practically every three or four days—I did—until we had to sell it to fight this case.

Q. Did you make that statement to Mr. Steffen?

A. I do not remember whether I did or not. I don't remember.

Q. Do you recall, when you were asked concerning the nature of the dirt in the car—did you state that it looked like it could have been cement dust?

A. I do not recall ever making such a statement.

Q. Do you deny making such a statement?

A. I don't remember.

Q. Do you recall telling that on another occasion when they borrowed a car from Mike Milanovich, that it looked like it had been in a clay field and that the seat covers were dirty?

A. I absolutely deny it.

[fol. 1034] Q. You deny that?

A. Ahuh.

Q. And at that time there was a dirty odor or awful odor in the car that smelled like fermenting mash?

A. I don't remember any of that conversation at all.

The Court: Aren't you falling into the same habit of other counsel, perhaps, of repeating now?

Mr. Parsons: This is a different statement, your Honor.

The Court: Same day.

Mr. Parsons: Same day, but a different statement and at a different time.

A. They was never there except that morning and left, and I never seen Steffen from that day till this.

By Mr. Parsons:

Q. Do you recall telling Mr. Steffen that on the evening of June 18, 1958, that Clay Grimmer and Millie Gauger left 8032 Webb Court about seven or 7:30 p.m. and were gone for approximately two hours?

A. I said they left. I did not say no two hours. I said they went and got a case of beer.

Q. When did you say that, Mrs. Milanovich?

A. I said that Millie and Clay went and got a case of beer.

How long does it take to go get a case of beer?

[fol. 1035] Q. Do you recall telling them that they left in a Chevrolet automobile that belonged to you and Mike or to Mike?

A. They couldn't have left in a Chevrolet, because we had no license at that time for the Chevrolet.

Q. Do you deny stating that they left in the Chevrolet automobile? Is that correct?

A. I don't remember making that statement.

[fol. 1041] Q. If I recall correctly, you said that on June 2nd you saw Ben Guerrieri?

A. Bennie Guerrieri, but I did not see Clay or the other man.

Q. You did not see Clay Grimmer. And am I correct on that day you went fishing or you were going to go fishing?

A. We were going to go fishing.

Q. At that time did you go through the gate at the Little Creek Amphibious Base?

A. Yes, sir, we did.

Q. And you said that you jokingly—who said, "Give me my end" and made the big joke about the robbery?

A. Truthfully, Bennie was ribbing about it and kidding about it. He thought it was a big joke.

Q. Bennie thought it was a big joke?

[fol. 1042] A. That's right.

Q. Do you consider the theft of the Little Creek Amphibious Base a big joke?

A. I think it is horrible. I will answer that. I think it is horrible.

Mr. Koutoulakos: Wait a minute. Do not get excited.

The Court: The objection is sustained.

By Mr. Parsons:

Q. Why did you suggest to them, as I recall your testimony, "Let's go see what it is all about"?

A. I didn't say I suggested it. I said I didn't know who suggested it.

Q. Oh, you do not know who said that?

A. No, I really don't.

Q. Who was driving the car at that time?

A. I was.

Q. You were driving the car?

A. Yes, sir.

Q. So you took that suggestion and went into the Base at that time?

A. Well, after all, my husband is Navy and my husband thought it was a terrible thing to happen, so it's nothing unusual—I'm quite sure you will find hundreds of people did what he did.

[fol. 1043] Q. But your husband was not stationed at the Little Creek Amphibious Base, was he?

A. No, but it's a Base close to our house and we do have our banking at that Base.

Q. It is the closest Base to your home, actually?

A. Yes, sir.

Q. How long does it take to get from the Amphibious Base to your home, approximately, Mrs. Milanovich?

Mr. Koutoulakos: Is that walking, running? Wait a minute. I think he ought to ask her in what manner. Walking, running, car, plane or what? I do not know what he has in mind.

The Court: I assume he means in an automobile.

Mr. Parsons: I assume that too, your Honor. In an automobile, to make Mr. Koutoulakos happy. I do not know how people would get there otherwise.

By Mr. Parsons:

Q. In an automobile, how long would it take?

A. Well, I'm going to be perfectly frank with you. I have been out there with crowds to go swimming. I couldn't even tell you. I imagine about twenty minutes, if I were to actually think about it.

[fol. 1044] Q. Twenty minutes to thirty minutes?

A. I really couldn't say that. I'm just telling you that. It depends on how fast you go and how slow you go. I do not do my shopping at the Commissary out there.

Q. Now, Mrs. Milanovich, you say that you deny you told the F. B. I. agents that the party was on June 1st?

A. I do deny it or, at least if I did, I am certainly mistaken and I am quite sure I did not.

Q. Who was, if anyone, at your home on June 1st, if you recall?

A. Are we speaking of June 1st?

Q. June 1st.

A. Before Mike was locked up?

Q. Before Mike was locked up, yes.

A. The two men and myself and my husband.

Q. And the names of those two men?

A. Mr. Crawford, which is in the hospital, and Mr. Carson.

Q. Mr. Carson and Mr. Crawford?

A. That's right. Now, there was, during the daytime, which I did not know until now when that was, there were three or four different women there. That was strictly that somebody runs in and drinks a cup of coffee and goes out.

Q. Let me get this straight. It was you and your husband and Mr. Crawford and Mr. Carson; is that right?

[fol. 1045] A. That's correct.

Q. They are the four people who were there?

A. That's right.

Q. And if your husband says that Clayton Grimmer was there, he is mistaken; is that right?

A. On the first of June? My husband is more than mistaken, because my husband wasn't home in the daytime.

Q. I am not talking about the daytime, I am talking about the evening.

Mr. Koutoulakos: Your Honor, I have not heard any evidence that Grimmer was there. The testimony is Mr. Grimmer was not there. He knows how to put that evidence on.

Mr. Parsons: It is already in evidence.

Mr. Koutoulakos: Already what?

Mr. Parsons: Already in evidence.

Mr. Koutoulakos: That Mike said Grimmer was there in the home on June 1st?

The Witness: Well, he was not there.

By Mr. Parsons:

Q. He was not there?

[fol. 1046] A. He was not there.

Q. So your husband is mistaken; is that right?

A. My husband is crazy.

The Court: Anything further, Mr. Parsons?

Mr. Parsons: Yes, sir, I have some other questions, your Honor—not very many, but I want to get organized.

By Mr. Parsons:

Q. Now, I believe you stated that you first had knowledge that Grimmer had some money on the 17th of June, that is, he had some change?

A. I didn't say the 17th. I said the 18th.

Q. All right, I believe that is correct. And that he had just come by your house on the 17th; is that correct?

A. No, I said I picked him up at the airport. I met him at the airport on the 17th.

Q. You picked him up at the airport—

A. That's right.

Q. —on the 17th?

A. That's right, I said I went to the airport to pick him up.

Q. Then you had known he was coming; that is correct, isn't it?

A. Yes, sir.

[fol. 1047] Q. And it was about a garage. Now, it was in the evening of the 18th; is that correct, when you first discovered there was some change in your home?

A. That's right.

Q. You stated at that time that there was something about a loan to Millie Gauger; is that correct?

A. Millie is the one who started it. She started talking about a television. She told Clay she had lost hers and would he lend her enough money to get one. He stretched the point to her—if he had as much as \$500.00 to take home to his wife, then he would lend her the difference, if it would be enough—

Q. All right.

A. —but he stretched it was a loan and not a gift.

Q. And they counted the money, not once, but twice; is that correct?

A. Well, he counted it. He gave it to her and it was four hundred and some dollars. Then after a few more beers and a few drinks of whiskey, then Clay wanted to recount it.

Q. And that money was then stored in the house; that is correct, isn't it?

A. It was put in a white suitcase with the doors wide open right in the dining room, nothing locked or nothing else.

[fol. 1048]. Q. The doors to what wide open?

A. To the closet that that was put in in the dining room.

Q. In other words, it was not locked in the closet; is that what you mean?

A. It was not locked and the doors wasn't closed. It was just left open.

Q. So it was in plain view?

A. That's right, in plain view of anyone.

Q. I believe that your husband was not home that evening, according to your testimony?

A. He was not.

Q. Now, the next morning—I call your attention to the next morning—do you recall, when you were asked about whom the money belonged to by the agents—

A. Yes, I do.

Q. —and you stated that Millie Gauger stated that the bag had been loaned to her. Wasn't it more accurate to say that you said to her, "Don't you remember I loaned you that bag, Millie"?

A. No, I did not say that, and Millie didn't answer it that way. Mr. Steffen called Millie and asked her, he says, "Millie, was that bag empty when Virginia lent it to you?" And she said, "Yes".

Q. And you did not say, "Don't you remember I loaned [fol. 1049] you that bag, Millie"?

A. They asked me how many pieces I had and I told them three.

[fol. 1076] MIKE MILANOVICH, called as a witness by and on his own behalf, having been duly sworn, testified as follows:

Direct examination:

By Mr. Koutoulakos:

Q: Now, Mike, speak up so everybody can hear you, especially this Court and jury and Mr. Parsons, because he has a right, at any time, to ask you some questions. Do you want to state your full name, please, and keep your eyes focused on the jury and speak up:

A. Mike Milanovich.

Q. Where do you live, Mr. Milanovich?

A. 8032 Webb Court, Norfolk, Virginia.

Q. And for how long have you lived there?

A. Approximately three years.

Q. Keep your attention directed at the jury. Now, what is your occupation, Mr. Milanovich?

A. I am Aviation Chief Machinist Mate in the United States Navy.

Q. For how long a period of time have you been a Chief Petty Officer?

A. Approximately eighteen years. Chief Petty Officer?

Q. Yes.

A. I have been Chief Petty Officer about four and a half [fol. 1077] years.

Q. And for how long a period of time have you been a member of the United States Navy?

A. Approximately eighteen years.

Q. Now, I show you a certified copy that has been stipulated into evidence, and ask you if that is a true copy of your Service Record?

Mr. Parsons: I think it is more technical to say that is a true copy of a part of it.

A. That is a true copy of my—

Mr. Parsons: The record is about that thick, I believe (indicating).

Mr. Koutoulakos: Oh, it is!

The Witness: That was sent to me by the Bureau of Personnel by Admiral Smith.

By Mr. Koutoulakos:

Q. And it is a correct copy of this part?

A. That is correct, yes.

Q. All right. Now, Mr. Milanovich, before we proceed any further, have you ever been arrested for anything other than one traffic charge in your entire life?

A. No, sir, never in my life.

Q. Inviting your attention to sometime in April of, I [fol. 1078] believe, this year, did there come a time when you met Clay Grimmer and Bennie Guerrieri?

A. Yes, sir, there is.

Q. Will you please tell this Court and jury when it was for the first time that you became acquainted with those two gentlemen?

A. It was on April 12th of this year. My brother and Mr. Guerrieri and Mr. Grimmer came to my home, which I did—

Q. Did you—

A. Pardon.

Q. Go ahead, I'm sorry.

A. —which I did not know they were coming. I came home in the afternoon. My brother was there. He was the only person there, and I shook hands and greeted him and he told me it was his birthday, it was a surprise.

Mr. Parsons: I'm sorry, could you talk a little bit louder.

A. He told me it was his birthday, which I knew.

By Mr. Koutoulakos:

Q. Who told you this?

A. My brother.

Q. Up to that point, could you please establish the time of day or night when you met Steve and these two people?

A. I believe it was in the afternoon, roughly about four o'clock.

[fol. 1079] Q. And had you made any plans for that evening?

A. Yes; yes, sir, I had made plans.

Q. Did the original plans include Steve and Clay and Ben?

A. No, they did not.

Q. What were those plans?

Q. Mr. Peele, Mrs. Peele, Mr. Picot and Mrs. Picot, my wife and myself were going to the Chief Petty Officer's Club to a dance—I believe it was Larry Elliott's Orchestra that was playing—of which I was president of at that time and Carl Peele was the manager.

Q. Upon your being confronted with the presence of your brother and his two friends, did that, in any way, alter your plans for the evening?

A. Yes, it did.

Q. In what way, and just what did you do?

A. Well, if I recall, Guerrieri and Grimmer came over approximately six o'clock. So he introduced me to Grimmer and Guerrieri.

Q. So the jury and the Judge will have the benefit of whom you are talking about, when you say "they came over"—

A. Guerrieri and Grimmer.

Q. Will you tell us where?

A. They came from a motel—that's what they told me, [fol. 1080] they was down the road staying at the motel, and that's the first time I met those two people.

Q. All right, sir.

A. And that's approximately six o'clock that evening.

Q. Who introduced them?

A. My brother, Steve, introduced them to me.

Q. Prior to that date had you, at any time, ever met these gentlemen?

A. No, sir, I have not.

[fol. 1096] Q. Now, inviting your attention to the next time any robbery took place which, I believe, is either late June 1st or early June 2nd, or thereafter, as has been testified to, will you please tell this Court and jury what

your activities were during the afternoon of June 1st and during the morning of June 2nd?

A. Yes, sir, I will.

Q. What were they?

A. June 1st, I believe, was on a Sunday. I was over—I woke up, of course, in the morning and I went through the routine, and in the afternoon I went over Chief Madden's home.

Q. Is he outside ready to testify?

A. Yes, sir. I went over there to discuss Little League with him, which him and I had offices in the Little League in Norfolk, and I stayed over his home approximately [fol. 1097] till five o'clock that afternoon.

Q. And where did you go from there?

A. I went—I called my wife and told her that I was going to be home shortly. Instead, I went to the Chief's Club approximately an hour, an hour and a half, maybe.

Q. Then what did you do?

A. Then I went home.

Q. Do you have any recollection as to the time it was when you arrived home?

A. Roughly around seven o'clock, approximately.

Q. Who was there when you arrived there?

A. When I got home, my wife and Mr. Carson.

Q. And who is Mr. Carson?

A. The gentleman that lives next—that was living next door at the time.

Q. And what did you do?

A. Well, I spoke to them and had one drink with them and I laid down on the davenport.

Q. What happened next during that evening?

A. Well, a friend of mine came over.

Q. And who was that?

A. Chief Crawford.

Q. Is he the gentleman that has given a deposition to be used in this court?

A. That's correct. He was very ill in the hospital.

[fol. 1098] Q. What time, if you know, did he arrive?

A. About eight o'clock.

Q. How long, if you know, did Mr. Crawford remain at your home?

A. What is that? Repeat that.

Q. Do you deny that you stated to the agents that, "I also befriended Grimmer—" —that is, "I made a friend of him"— "by allowing him to stay overnite and use my car, because he has been interested in helping my brother Steve, make bond"?

A. I never made that statement, never.

Q. You deny that statement?

A. Yes, sir.

[fol. 1122] Q. Do you recall stating to the agents that the next time you saw Grimmer was on about June 17th?

A. Yes, I deny that, definitely.

Q. You deny—

A. Yes, I deny it.

Q. —that you made that statement?

A. Yes, sir.

Q. Well, when was the next time that you saw Grimmer? This was after the crimes had occurred, sir.

A. When is the next time from when, sir, that I saw Grimmer?

Q. Well, from June 1st.

A. June 1st?

Q. That is the next time you saw Grimmer?

Mr. Koutoulakos: Now, your Honor; he never said he saw Grimmer June 1st.

Mr. Parsons: I never said it. I said, when did you next see him after June 1st?

The Court: Subsequent to June 1st.

Mr. Parsons: Subsequent to June 1st.

By Mr. Parsons:

Q. When did you see him after that date, if you want it phrased that way?

A. I saw—after June 1st? I saw Grimmer in the Post [fol. 1123] Office Building in Norfolk, Virginia, in the Marshal's office, sir.

Q. You did not see him on June 17th or June 18th, sir?

A. I—June when?

Q. 17th or 18th, sir.

A. Yes, I saw him the evening, over my home, sir, the night—the morning I was arrested.

Q. All right. So you were about a half a day ahead; is that right, when you say you saw him the next day, the next time you saw him was in the courthouse in Norfolk? You saw him at home?

A. The day he was arrested with me, sir, right.

Q. Do you recall telling the agents that "The next time I saw Grimmer was June 17, 1958, when I arrived home from work, he was at my home, with a suitcase. I did not see the contents of the suitcase"? Do you recall telling the agents that?

A. Yes, sir, I deny that, yes, sir.

Q. You deny that?

A. Yes, sir.

Q. Do you recall telling the agents "Grimmer slept at my home the night of 17th June and 18th of June"?

A. Yes, I deny that, yes, sir.

Q. Do you deny telling them that "On the 17th June he [fol. 1124] slept in the guest bedroom and on the 18th June he slept on the davenport in the living room"?

A. Yes, sir, I deny that.

Q. Do you recall stating to the agents that on the 18th of June you arrived home about 8:00 p.m. and nobody was there?

A. What time, sir?

Q. About 8:00 p.m. This is the night before you were arrested, Mr. Milanovich.

A. Approximately at 8:00 p.m. I was over Mr. Picot's house, sir.

Q. All right, sir.

A. Yes, I deny that.

Q. Do you recall telling the agents that you changed clothes and went to Mr. Picot's house?

A. No, sir, I deny that, yes, sir.

Q. You deny that you stated you changed clothes at home and then went to Mr. Picot's house?

A. That's correct, sir.

Q. I believe you then stated you went to Mr. Picot's and went to the C. P. O. Club; is that correct?

A. That is—I went from Mr. Picot's home, I went to the C. P. O. Club, that's correct, sir.

* A. About 12:30, one o'clock, something like that.

Q. And how about Mr. Carson?

A. He stayed a little longer than he did. He stayed there probably 1:30, two o'clock, something like that, and then he went home.

Q. You heard the testimony of Christ, Clay and Bennie to the effect that you drove them to the Amphibious Base sometime in the late evening of June 1st; is that true?

A. That is not true.

Q. Did you, at any time, lend your car to them for the purposes of it being used for stealing at these two places?

A. No, sir, I did not.

Q. Did you go there at any time during the morning of June 2nd—

Mr. Parsons: If your Honor please, this is a series of leading questions and I think he should confine himself again to asking the questions and getting the answers and not supplying the answers in the questions.

By Mr. Koutoulakos:

Q. What, if anything, did you have to do with the robbery of the Amphibious Base, Mr. Milanovich?

[fol. 1099]. A. Sir, I am going to tell you like I told the F. B. I. the whole day they kept me up there—I didn't have nothing to do with it, the Amphibious Base or the Naval Air Station.

Q. And you deny, before your God, that you had anything to do with anything, robbery, receiving, or anything like that?

A. Yes, sir.

Mr. Parsons: If your Honor please, he is under oath and that question is superfluous.

The Court: Objection sustained.

By Mr. Koutoulakos:

Q. Now, with respect to the 18th, I believe it is, of June, that date was testified to as to when Mr. Grimmer was found in your home, or the morning of the 19th, am I correct?

A. That's correct, yes, sir.

Q. Will you please tell the jury your activities on that day and what Mr. Grimmer did in your home?

Mr. Parsons: If your Honor please, I object to that question. Ask him what he did.

Mr. Koutoulakos: That is what I am asking, your [fol. 100] Honor. I want him to tell this jury what to say.

Mr. Parsons: You are not telling him what to say.

Mr. Koutoulakos: I am not telling him what to say—

The Court: You are all finished? Objection overruled.

A. The 18th of June, I believe, the night of the 18th of June—

By Mr. Koutoulakos:

Q. Yes, sir.

The Court: He asked you whether Mr. Grimmer was in your house. Just answer yes or no.

A. The night of the 18th of June?

By Mr. Koutoulakos:

Q. Yes, if that is the date.

A. If I was arrested on the 19th, yes, he was there on the 18th.

Q. When did it first come to your attention that he was at your home?

A. When I came home.

Q. When was that?

A. That evening about one o'clock, or 1:30.

Q. Tell this jury where you had been before that time [fol. 1101] up until approximately 1:30 in the morning.

A. Well, in the afternoon they secured the squadron. We had a squadron party and I went to the party that afternoon about two o'clock, two in the afternoon, and I left the party about 6:30 or seven o'clock, and I went back with two—to the Chief's Club. I stayed there approximately fifteen or twenty minutes. I went over Mr. Picot's house and talked to him. I was talking to him about some insurance, and then I went home—no, I didn't go—then I went out and I bought some beer, I believe. I bought some beer back over Mr. Picot's house. We discussed our—

about insurance, and so on and so forth. It was a personal matter about insurance. And then I went back to the Chief's Club—some other chiefs and I met there and we had some few drinks.

Q. And is there any chief out there waiting to testify?

Mr. Parsons: If your Honor please, that is leading.

The Court: Yes.

By Mr. Koutoulakos:

Q. Whom did you see when you later arrived at the Chief's Club that you recognized?

A. That evening?

Q. Yes.

A. Well, I know quite a few people in there. I know a [fol. 1102] majority of the chiefs in there, but the manager of the Chief's Club—

Q. What is his name?

A. —I spoke to, I think, or at least when I left.

Q. What is his name?

A. Chief Katibah.

Q. And he is outside?

A. Yes, sir, he is.

By Mr. Parsons:

Q. Did you say Katibah?

A. I believe that's how you pronounce it.

By Mr. Koutoulakos:

Q. It is Katibah. And upon your arrival to your home, what did you do upon discovering Mr. Grimmer there, if anything?

Mr. Parsons: Ask him what he did. Do not lead him.

Mr. Koutoulakos: I do not think I am leading him, your Honor. I am asking him what he did when he arrived and saw him there; and I wish he would just stop.

The Court: Objection overruled. You are just as bad as Mr. Koutoulakos. It is the pot calling the kettle black.

Mr. Koutoulakos: Thank you, your Honor.

[fol. 1103] By Mr. Koutoulakos:

Q. Go ahead and tell us what—

A. What was the question, sir?

Mr. Koutoulakos: Will you please read the question back.

(The pending question was read.)

A. Yes, I shook hands with him and him and—I didn't disturb him too much. I guess I heckled him a little bit and my wife and Miss Gauger was playing pinochle when I arrived there.

By Mr. Koutoulakos:

Q. And then what did you do, if anything?

A. Well, then I asked them to play a game of pinochle, four-handed pinochle. We played partners.

Q. Then what happened?

A. When we finished the game, we went to bed.

Q. Did there come a time when the F. B. I. arrived?

A. Yes, sir, the following morning.

Q. Now, what knowledge, if any, did you have that Mr. Grimmer might have had any money that belonged to the Naval Air Station or the Naval Exchange Base?

A. None at all, nope to my knowledge.

[fol. 1104] By the Court:

Q. Were you advised by anyone, before you went to sleep that night, about any money in the premises?

A. No, sir, I did not know there was any—your Honor, I did not know there was any money on the premises except what I had in my pocket.

Mr. Koutoulakos: I believe, your Honor, that is all I have. Thank you.

Cross examination.

By Mr. Parsons:

Q. Mr. Milanovich, do you recall talking to Special Agent Jerry T. Batts and Herman F. Drummond, sir?

A. Yes, sir, I recall talking to them.

Q. Do you recall that they prepared a statement that you did not sign, sir?

A. Yes, I recall of having a discussion with them, sir.

Q. Did you not agree that that statement was accurate?

A. No, sir, I did not agree that that statement was accurate.

Q. What did you say about the statement?

A. I told Mr. Batts and Mr. Grimmer (sic)—they were trying to put words in my mouth, and that's one of the [fol. 1105] main reasons I wouldn't sign it.

Q. You did not say anything after you called your lawyer, that you would not sign it?

A. They kept browbeating me all day to sign it and I told them that was the best way to get off.

By the Court:

Q. What do you mean by browbeat? You mean they were physically—

A. No, I wouldn't say that.

Q. Well then, just drop the word browbeating. They were talking to you.

A. They were talking to me, except one time one of the agents stood up and called me a liar.

By Mr. Parsons:

Q. Isn't it true that after you called your lawyer, you then said you would not sign it; is that correct?

A. I didn't tell them I called my lawyer.

Q. But did you call your lawyer?

A. No, sir, I did not call my lawyer.

Q. Did you make any 'phone calls while you were there?

A. Yes, sir.

Q. Did you tell them that you had talked to your lawyer and he advised you not to sign it?

A. I said my lawyer had advised me not to sign it.

[fol. 1113] Q. Now, I call your attention to June 1st. This is the Sunday evening where you stated you went by Frank Madden's house; that is correct, isn't it?

A. June 1st?

Q. You testified on direct examination that you went to Mr. Madden's house on June 1st. Did you or didn't you?

A. Yes, sir.

Q. All right, sir.

A. That afternoon, sir.

Q. You discussed matters about the Little League? That is what you said.

A. That is correct, sir.

Q. Then you went by the CPO Club; isn't that right?

A. That is correct, sir.

Q. Did you call your home?

A. I called my home from Chief Madden's home, sir.

Q. What did you say at that time?

[fol. 1114] A. I told my wife that "I will be home shortly," because she had dinner ready.

Q. Did you tell your wife or did your wife tell you that Clayton Grimmer was there at that time?

A. No, sir.

Q. Do you recall telling the agents that you stated that your wife stated Grimmer was there and you asked her, "In reference to Steve?" and she said, "Yes"? Do you recall telling that to the agent?

A. She said that he called, that Guerrieri called in reference to Steve.

Q. It was Guerrieri that called. So you deny saying that; is that right?

A. Deny saying what, sir?

Q. That you called your wife, that she told you that Grimmer was there and that you asked, was it in reference to Steve, and she said, "Yes"?

A. I didn't say Grimmer was there.

Q. You did not say Grimmer was there?

A. No, sir.

Q. You deny that you told the agents that?

A. That is correct, sir.

Q. Did you tell your wife to tell Grimmer that you would be home shortly?

A. No, sir, I didn't tell my wife to tell Grimmer anything, [fol. 1115] because Grimmer was not there, sir, to my knowledge.

Q. Did you tell your wife to tell Grimmer that you were unable to make the bond for Steve?

A. No, sir.

Q. All right. Now, when you got home, did you talk to Grimmer?

A. What day, sir? Grimmer was not at my home when I got home.

Q. This is June 1st, this is the day you say you went to Frank Madden's house.

A. That is correct, June 1st.

Q. You went to the Club.

Mr. Koutoulakos: Your Honor, this man has been saying, under pressure, that Grimmer was not there.

Mr. Parsons: This is not suck in. (sic) This is relating to what he told the agents.

The Court: Objection overruled.

Mr. Parsons: And it is proper cross-examination.

A. I don't recall making that statement.

Mr. Koutoulakos: He did not ask him that question. He asked him if he talked to Grimmer.

Mr. Parsons: I think I have a right to ask him what he [fol. 1116] told the agents. I am sorry.

By Mr. Parsons:

Q. I had asked you if you talked to Grimmer when you got home, and I did not catch your answer because we were interrupted.

A. No, I did not talk to Grimmer when I got home.

Q. Do you recall telling the agents that you talked to Grimmer a few minutes after you got home that night?

A. I did not tell that—say—tell the agents—yes, I deny it.

Q. Do you deny, sir, also that Grimmer asked to borrow your automobile to see some of his relatives at that time?

A. Yes, sir, I deny it.

Q. You deny it. I believe you then stated that you had fallen asleep on the davenport that night; is that correct?

A. Fallen asleep on the davenport?

Q. Yes.

A. On the night of June 1st?

Q. Yes.

A. I laid down on the davenport, sir, but I did not fall asleep.

Q. So that you now deny, sir, that you fell asleep on the [fol. 1117] davenport in the living room and slept there until about four or 5:00 a.m. that morning?

A. I did not state that.

Mr. Koutoulakos: Your Honor, that is the point I am making. There is no evidence he fell asleep.

Mr. Parsons: It is his statement.

The Court: You will have to ask him first, though, Mr. Parsons.

Mr. Koutoulakos: That is right.

The Court: In other words, there is no evidence at the present time that he fell asleep on the davenport and did not awaken until four o'clock in the morning. You can ask him what he said in the statement, if he said that, but there is no evidence yet—

Mr. Parsons: That is what I asked him, your Honor. I thought I did.

The Court: You have the same habit of someone else I know in the courtroom. You are trying to testify. Let's let the witness testify.

Mr. Parsons: I will ask him, because I thought I did.

[fol. 1118] By Mr. Parsons:

Q. Did you not state to the agents that you fell asleep on the davenport and slept there until about four or five o'clock in the morning?

A. No, sir, I did not fall asleep on the davenport. I laid down.

By the Court:

Q. Did you say it to the agents?

A. No, sir.

Q. All right.

A. No, your Honor.

The Court: That is what he asked you. That is what you are supposed to answer.

By Mr. Parsons:

Q. Did you say also to the agents that when you awakened the car had returned and Grimmer was in the bed in the guest room by himself? Did you state that?

A. I did not state that, no.

Q. Do you recall stating to the agents that on Monday morning you got up with a hangover and went to work at the Naval Air Station and did not notice anything irregular about your automobile?

A. That is correct, sir. There was nothing irregular about my automobile that next morning.

[fol. 1119] Q. Do you recall that you told the agents that when you arrived back home that night that Grimmer was not there?

A. No, I do not recall making that statement to the agents.

Q. Do you recall you stated to them that your wife stated they had gone back to Ohio?

A. No, I do not recall that, sir.

Q. Do you recall telling them that you did not know how he traveled to Ohio, but that you recalled that your wife told you that Grimmer was going to take a plane back to Ohio? Do you recall making that statement?

A. Repeat that, please.

Q. That you did not know how he traveled to Ohio, but your wife had told you that he was going to take a plane back to Ohio, do you remember telling them that?

A. I did not make that statement.

Q. You did not tell them that?

A. No, sir.

Q. Do you recall that your wife complained to you, sir, or that you told the agents, rather, that your wife complained about the car being dirty?

A. No, sir, I don't recall that, sir.

Q. Do you recall telling the agents, sir, that sometime in the middle of June, about the 11th of June, that you went to get a crescent wrench to start a water pump and [fol. 1120] it was missing?

A. That is correct, sir.

Q. Do you recall telling them something about a heavy duty screwdriver which was missing?

A. No, I do not recall making that statement, sir.

Q. Do you recall telling them that you had missed a pair of six-inch side cutting pliers?

A. No, sir, I don't recall making that statement, sir.

Q. Do you recall telling them that you complained to your wife because she left the carport shed unlocked?

A. No, I did make that statement, sir, yes, sir.

Q. And further that some of your tools were missing; is that correct?

A. That is correct, sir.

Q. I believe at this time you also denied you had any knowledge of the burglary at the Little Creek Amphibious Base; isn't that correct?

A. Repeat that, please.

Q. That you denied at this time that you had any part in the Little Creek Amphibious Base robbery?

A. That is correct, sir, right.

Q. And at that time did you not say that you did not let anyone stay at your home or use any of your property with knowledge that they would commit a crime?

[fol. 1121] A. That is correct, sir.

Q. Do you recall telling the agents that the reason that you allowed Clayton Grimmer to stay overnight at your home during the past few weeks—and this was the past few weeks, I assume, prior to the time of the statement—“or anytime or permitted him to borrow my car while in Norfolk, Virginia, on about three occasions recently is because he first came to my home on April 26, 1958, with my brother Steve, who introduced Grimmer as his friend”? Do you recall making that statement?

A. I do not recall making that statement, sir.

Q. Do you deny making that statement, sir?

A. Yes, sir.

Q. Do you recall stating that, “I also befriended Grimmer by allowing him to stay overnite and use my car, because he has been interested in helping my brother Steve, make bond”?

Q. I believe you stated that you arrived home about 12:30 to one; that is correct, isn't it? That is the night of the 18th [fol. 1125] or the early morning of the 19th. Do you recall what time you arrived?

A. In June, sir?

Q. This is on June 18th or 19th.

A. Yes, sir, I approximately got home about 1:30—

Q. All right, sir.

A. —1:30; two o'clock, probably—no, roughly around 1:30.

Q. Who was at your home at that time, sir, when you arrived home?

A. Miss Gauger and Grimmer and my wife.

Q. Now, Mr. Milanovich, did you ever, at any time, tell the F. B. I. that you had gone to Baltimore on the evening of the 16th or the morning of the 17th?

The Court: Of what month?

By Mr. Parsons:

Q. This is of May. I'm sorry, sir.

A. I don't recall, sir, if I have or if I haven't, sir.

Q. Did you or did you not tell us—

A. I don't remember, sir.

Q. You do not remember?

A. No, sir.

Mr. Parsons: If the Court will indulge me just a moment, sir.

[fol. 1126] Mr. Koutoulakos: Your Honor, while he is—I was wondering if we may have copies of everything—

The Court: We will take a brief recess at this time, Members of the jury.

(The Court recessed at 3:35 p.m.)

(The Court reconvened at 3:50 p.m.)

The Court: You gentlemen waive the jury poll, I take it?

Mr. Koutoulakos: Yes, sir, your Honor.

Mr. Parsons: Yes, sir.

The Court: Mr. Parsons, did I understand that you did not care to ask Mr. Milanovich any further questions?

Mr. Parsons: That is correct, your Honor.

The Court: Is there any redirect, Mr. Koutoulakos?

Mr. Koutoulakos: I believe that is it, your Honor.

[fol. 1173] BENJAMIN T. GUERRIERI, recalled as a witness, previously duly sworn, testified further as follows:

Cross examination.

[fol. 1178] By Mr. Varoutsos:

Q. Now, Mr. Guerrieri, since you have testified in this court this past Thursday, did you send Virginia a dime and two nickels along with an article from the newspaper?

A. I did, sir.

Q. When did you do that?

A. Why did I do that, sir?

Q. When did you do that, sir?

A. When I read in the newspapers where Virginia had made her 'phone call, allegedly.

Q. All right.

A. That was one doubt that was never clarified in my mind as to how this whole thing started, sir.

[fol. 1179] Q. And did you read that before you testified?

A. No, sir.

Q. When did you receive that paper?

Mr. Parsons: Do you mind if I examine what you are talking about, Mr. Varoutsos?

By Mr. Varoutsos:

Q. And you say that you did send this to Virginia Milanovich?

A. Yes, sir.

Q. These two nickels and a dime?

A. Yes, sir.

Q. Along with a newspaper clipping?

A. Yes, sir. The two dimes were in case they wanted to make some 'phone calls.

[fol. 1278] MARVIN E. STEFFEN, recalled as a witness by and on behalf of the Government, previously duly sworn, testified further as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Steffen, I believe you have already stated your name, but for the benefit of the jury, you might state your name and who you are again, sir.

A. Marvin E. Steffen, I am a Special Agent of the [fol. 1279] Federal Bureau of Investigation.

Q. Mr. Steffen, I call your attention, sir, to the day of June 19th, and ask you, on that day, did you have occasion to talk to a Virginia Lee Milanovich, sir?

A. Yes, sir, I did.

Q. I wonder if you would tell the jury, first, how many times you talked to her and, second, at what time of the day you talked to her?

A. I talked to Virginia Lee Milanovich in the forenoon following the arrest of her husband Mike Milanovich for about an hour and then I talked to her in the afternoon with another agent for about an hour and a half.

Q. Do you recall the times of these interviews, sir?

A. The first interview was from about 8:45 to 9:45 or 9:50.

Q. During that conversation did Mrs. Milanovich make statements to you concerning questions that were presented to her, sir?

A. Oral statements, sir.

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[fol. 1287] By Mr. Parsons:

Q. Mr. Steffen, do you recall what statement Mrs. Milanovich stated about a dirty car or a car?

A. Yes. We asked her about a car or their car and she stated that she could establish that her husband was not involved in these burglaries and she also stated that these individuals, whom she had named as Clayton Grimmer, Bennie and Ben, had borrowed her husband's car or their

car on several occasions and that on one occasion they came back with the car quite dirty.

Q. Now, Mrs. Milanovich has denied that she said that. Did she say that, Mr. Steffen?

A. Yes, she did.

Q. Proceed, sir. What else did she say?

A. She said that on a later occasion, when they had borrowed the car from her husband, they came back and there had been what appeared to be clay from a clay field and some juice or liquid had been spilled in the car and that she had taken the seat covers off and washed them herself and had not put them back on the car as of that time.

Q. Did she make that statement to you, sir?

A. Yes, sir.

Q. What else did she say about the car, if anything?

A. Well, she said at that time the car smelled. She didn't [fol. 1288] know what had been spilled in it, but it smelled like fermenting mash.

Q. Did you talk to her at a later time, sir, in addition to this time?

A. Yes, sir.

Q. Who was present at this second conversation?

A. The second time Special Agent Dobbs was with me.

Q. Let me go back to the early morning interview with this question, sir. Do you recall her making any statement about Grimmer or Millie Gauger on the evening of June 18th, sir?

A. She stated that Millie Gauger and Clayton Grimmer were at their residence, that is, the Milanovich residence, on the evening of June 18th and that they had borrowed the Milanovich car. She clarified that by saying that they had borrowed the Chevrolet car and that they left the residence at about seven o'clock and returned a half an hour or an hour later.

Q. Did she at that time tell you anything about observing Millie Gauger or Clayton Grimmer counting any money or moving any money from a bag to another bag?

A. No, sir. She was asked about the money that was found in the suitcases that morning and she said that she

could give no explanation as to where that money had come from.

[fol. 1289] Q. Were you present when Mrs. Milanovich was asked whom the bags belonged to, sir?

A. Yes, sir.

Q. I wonder if you would relate to the jury what, if any, conversation occurred with relation to the bags, sir?

The Court: Now, that was covered.

Mr. Parsons: This is in rebuttal, your Honor.

The Court: Well, I know, but we are dealing now with Mrs. Milanovich's statement to Mr. Steffen, a statement taken after the arrest. I have a distinct recollection of some agent testifying what was said by Mrs. Milanovich when at the house, at the scene right there.

Mr. Parsons: If your Honor please, I asked her the question, during the course of examination, as to what was said about the bag, as to whose bag it was and what the appearance was.

The Court: All right, go ahead, proceed.

Mr. Parsons: I would like Mr. Steffen to state what she said to him in his presence about the bag and as to how [fol. 1290] it occurred to contradict the story she told on the stand about it, sir.

By Mr. Parsons:

Q. Will you tell what occurred, sir, as you recall?

A. Another agent came into the room with the overnight bag and asked her, "Whose—" —asked Mrs. Milanovich whose bag it was and she stated that it was Millie Gauger's bag. Then Millie came into the room and the agent said that—Millie had said that it was Virginia Milanovich's overnight bag. At that time Virginia Milanovich stated to Millie words to the effect, "Millie, tell them the truth now, that I loaned you that bag last night."

Q. Now, I call your attention, sir, to the interview that occurred again, that occurred in the midday of that day, and ask you if you can, sir, approximate the time that interview took place?

A. The interview in the afternoon was shortly after Noon, about one o'clock, and we talked to her at that time.

for about an hour and a half, during which there were telephone calls received and made by her and other items interrupting the interview.

Q. Mr. Steffen, Mrs. Milanovich has denied that she talked to you more than once during that day. Did she talk to you once or twice, sir?

A. Special Agent Baker and myself talked to her in the [fol. 1291] morning from about 8:45 to 9:30 or 9:45 and then Special Agent Dobbs and myself talked to her in the afternoon.

Q. When she talked to you this time did she tell you anything about a party, sir?

A. Yes. When we talked to her on this occasion she stated that she had now had time to recall some things that she had forgotten to tell us in the morning because she was excited at that time, and she stated she would be able to prove by a number of individuals that her husband could not possibly have been involved in the safe burglary at Little Creek. She stated that this Sunday afternoon—and she placed the time, because she placed the Sunday, because she said that she recalled reading in the paper a day or two later about the safe burglary—she said that on that particular Sunday afternoon, which would have been June 1st, that a number of Navy chiefs, who were friends of theirs and the Navy chiefs' wives and some other people were at the Milanovich residence for a party, and they had a roast in the yard and then a cookout there and drank beer that evening.

Q. Did she tell you that that was the day of June 1st, sir?

A. She stated that it would have been the day before the burglary because she had read about—or it would have been that Sunday, because she had read in the paper a day or two later about the Little Creek burglary.

[fol. 1292] Q. I believe, if I may lead you slightly, that she stated a number of people who attended that party, did she not?

A. Yes, sir, she did.

Q. Did she tell you, if you recall, sir, that they ran out of beer and that somebody went to get some beer?

A. She stated that that evening they ran out of beer. She stated that Bennie, Clay Grimmer and the individual

whom she identified as Ben were at their residence at that time and they were going over to the shopping center near there to get some more beer. She stated that they were going to this particular store but the store had closed by the time they arrived there and they obtained the beer somewhere else.

Q. Are you sure that she told you this? She has denied that she told you this.

Mr. Koutoulakos: Your Honor, he is arguing with the witness.

The Court: Yes.

Mr. Parsons: I am arguing with the witness?

The Court: Yes. You are not arguing with the witness, but it is for the jury to determine whether or not she denied it, Mr. Parsons. They heard Mrs. Milanovich testify and now they hear Mr. Steffen testify.

Mr. Parsons: All right, sir.

[fol: 1297] MARVIN E. STEFFEN, the witness on the stand at the recess, resumed the stand and testified further as follows:

By Mr. Parsons:

Q. Immediately before lunch I believe I asked you something and I believe you stated something about going out to purchase some beer at a store. I wonder if you could recall that particular statement? This was at the one o'clock interview with Mrs. Milanovich.

A. Yes, sir.

Q. Did she tell you what happened after they went out, sir, if you recall?

A. She stated that they returned with the beer and a short time later these three individuals asked her husband [fol. 1298] Mike Milanovich for the keys to their car. That's the Milanovich car. She stated at that time Mike Milanovich had been drinking quite a bit and was practically passed out on the sofa in the living room and that he gave the keys to the car to these three individuals and then went to sleep on the sofa.

Q. Did she make any further statements about the automobile, if you recall, sir?

A. She stated that that was the night that she had referred to, that the car had become very dirty, that she did not see the car until the next morning when it came back. That was the time that the car was very dirty.

Q. Were you present, sir, when Mrs. Milanovich made a telephone call to anyone at all, do you recall, sir?

A. Yes, sir. During both of these interviews Mrs. Milanovich either made or received several telephone calls. During the morning interview she called for an attorney during the time we were there and also called for a bondsman, and in the afternoon, while we were there, she received several calls.

Q. Were you present, if you recall, sir, when she made a call to a man named Benjamin or a call to the residence of Benjamin Guerrieri?

A. No, sir, not to my knowledge.

Q. Did she tell you anything about this telephone call?

[fol. 1299] A. Yes. In the afternoon, when we talked to her, there were quite a few interruptions because of telephone calls, and during the interview at that time we asked her about who else she had called and she stated that she had called Ben Guerrieri in Youngstown after our morning interview. I questioned her concerning her reason for calling Ben Guerrieri and she stated that after talking to us in the morning, it appeared to her that Clay Grimmer, Bennie and the other individual, whom she identified as Ben, were probably involved in the safe burglaries and that she called Bennie's residence and asked to speak to him. She said that the individual man who answered said he was not Ben. She asked for Ben's wife and she was also told that Ben's wife was not there. She said that she did not know whether it was actually Ben or it could have been his brother that she talked to, and when we questioned her concerning the conversation with him, she said that she called him and told him of the arrest of her husband and stated that whoever was involved in this had better get Steve, her husband—or Mike, her husband, cleared of this matter or somebody was going to get hurt.

The Court: Mr. Parsons, Mr. Koutoulakos and Mr. Varoutsos, I see several people in the courtroom who may be witnesses yet, and I want you to look around at this time, if you will, and assure me that neither side intends [fol. 1300] to call them. I have no objection if neither side is to call any witness, but I want both of you—

Mr. Parsons: Might I make an inquiry?

Mr. Koutoulakos: Your Honor, the defense has finished with its case.

The Court: I understand.

Mr. Parsons: No, I do not see any persons that I recognize as being witnesses, your Honor.

Mr. Koutoulakos: Let me put it this way. There is nobody in this courtroom that will be used by the defense.

The Court: All right.

Mr. Parsons: Or by the prosecution, so far as I am able to tell by looking, but I do not know everybody.

The Court: No, that is perfectly all right, as long as you do not intend to—

Mr. Parsons: Not anybody that I see now.

By Mr. Parsons:

Q. All right, sir. In this conversation did Mrs. Mila-novich make any statement about whether Mike could have been in the Little Creek burglary or not, sir?

[fol. 1301] A. She stated that he could not have been because he was—had gone to sleep or practically passed out on the sofa that night after having been drinking beer.

Q. What did she state, if anything, about tools, if you recall, sir?

A. We asked her if she knew that her husband had purchased any tools recently. She stated that, to her knowledge, he had not during the past year. We asked her concerning a leadfaced hammer and she stated that her husband had a leadfaced hammer. We went to the tool shed attached to the house and she looked for a leadfaced hammer to show it to us, apparently, but was unable to locate it. She also stated that it was possible that some of her husband's tools had been used in this burglary if it was committed by these other individuals because some tools had been stolen from their residence.

Mr. Parsons: If the Court might indulge me just a moment. All right, Mr. Steffen, answer any questions that counsel might have.

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[fol. 1317] MARVIN BAKER, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Baker, I wonder if you would state your name and your occupation, sir.

A. Marvin Baker, Special Agent, Federal Bureau of Investigation.

Q. I call your attention, sir, to June 19th, sir, the morning hours of that morning, and ask you if you participated in the activities at 8032 Webb Court, sir?

A. Yes, sir, I did.

Q. During the course of that, sir, did you have occasion to talk to Virginia Lee Milanovich, sir?

A. Yes, sir, I did.

Q. And in whose company were you, sir?

A. Mr. Steffen, Marvin Steffen.

Q. Do you recall approximately the time that this interview covered, sir?

A. It was for a period of approximately an hour. It [fol. 1318] began a little before nine o'clock—a little before—about nine o'clock and it lasted until about somewhere near ten.

Q. All right, sir. Did she make any statement to you about sometime around the middle of April visitors coming to see her, do you recall that, sir?

A. Yes, sir.

Q. What, if anything, did she say concerning that visit?

A. She said that—she recalled that on the birthday of her husband's brother that there were some people that she later identified—she recalled the first names and they were later identified as a Mr. Grimmer and a Mr. Guerrieri and her husband's brother were at the house for a few days and

that she recalled that they were there on this particular day, which was April 12th, and the reason she recalled it was because her brother's—her husband's brother's birthday.

Q. During the course of that interview did she make any statements about the use of Mike Milanovich's automobile, if you recall, sir?

A. Yes. She said that the two men that she identified as Guerrieri and Grimmer were at her house on several occasions about this time and that she recalled that her husband had loaned the automobile to them and that on one occasion the car the next morning was very dusty, it had some dust [fol. 1319] in it which appeared to be lime dust, or something of that nature. She didn't know exactly what it was, but then on another occasion the car was loaned to this group of men and that it had what appeared to be red clay in the seat and that she had—it was so bad that she had taken the seat covers off and had them washed, also there was an odor in the car, she said, that appeared to be something like mash, or something like that.

Q. Mr. Baker, do you recall examining or did you, in the course of your investigation, have occasion to examine the Milanovich automobile, sir?

A. Yes, sir, I did.

Q. What kind of an examination did you make of it, sir?

A. Well, we examined the car earlier. Before she was interviewed by Mr. Steffen and I. Mr. Batts and I had examined the car and I noted that the—the car was clean at that particular time but there were no seat covers on the back seat of the automobile at that time.

Q. On the back seat?

A. Yes.

Q. Were there seat covers on the front?

A. Yes, sir.

Q. Did you see any evidence, sir, if you know, of mash or clay in the car at that time?

[fol. 1320] A. I did not, at that time, no, sir.

Q. Do you recall any statements by Mrs. Milanovich concerning the presence of one Clayton Grimmer or Millie Gauger on the evening of June 18th, sir?

A. Yes. She stated that on the evening of June 18, 1958, that Clayton Grimmer and Millie Gauger were at her resi-

dence; that they borrowed a Chevrolet automobile which belonged to her and her husband, that is, to the Milanoviches, and that they were gone from the residence some couple of hours in the automobile before they returned.

Q. Did she state where they stayed?

A. She stated that when they returned to her home that they remained there during that night.

Q. At that time, Mr. Baker, did she make any statement concerning the counting of money or the having of money then?

A. She stated that she did not know where the money came from, she had no idea where the money that was found at the residence that morning previously had come from.

Q. Did she state anything about any suitcases which were located on the premises, if you recall, sir?

A. Yes, I recall that she stated that there was a suitcase that she had loaned to Millie Gauger on the previous night, and that she said that that was her own suitcase, that she did not know to whom the second suitcase belonged, but [fol. 1321] judged that it belonged to Mr. Grimmer.

Q. Were you present in the presence of Mrs. Milanovich when something was asked of Millie Gauger whose suitcase it was or were you present when any such conversation like that took place?

A. I don't—I don't recall her—I don't recall that conversation.

Q. One other question, sir. At that time did she mention anything to you about a barbecue or cookout on April 13th, sir?

A. She stated that on the night before—she couldn't quite recall the date, but she recalled that her husband had been visiting with some other Navy personnel and that when he returned home he had apparently several beers and laid down on the couch, that she had some hard time awakening him.

Q. Was this on April 13th?

A. I believe that she referred at that time to the date of May—about May 30th. She didn't recall exactly what date that was. She said that she did recall that after that, some two or three days after that, she had read a newspaper account of a burglary at the Amphibious Base.

Q. Do you recall her saying anything about a barbecue party at that time at this interview, sir?

A. No, sir, I don't recall.

[fol. 1329] OSBORN LEON DOBBS, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Dobbs, would you state your name, sir, your occupation and where you are from and your station.

Mr. Koutoulakos: Your Honor, I will waive that and stipulate he is an agent of the F. B. I.

The Court: We are not going to waive anything. Let him state his name, his occupation and where he is stationed.

Mr. Koutoulakos: All right.

[fol. 1330] A. My name is Osborn Leon Dobbs; I am a Special Agent with the Federal Bureau of Investigation at Norfolk, Virginia.

By Mr. Parsons:

Q. Mr. Dobbs, I call your attention to the morning of June 19th, and ask you if you had occasion that morning to talk to Virginia Milanovich?

A. No, sir, I did not.

Q. I'm sorry, sir, that was my fault. I call your attention to the afternoon or middle part of that day, did you have occasion to talk to her?

A. Yes, sir, I did.

Q. About what time did you talk to her?

A. As I recall, Special Agents Steffen and myself arrived at her home, 8032 Webb Court, at approximately one o'clock on June 19th.

Q. Do you recall having some conversation with her, sir?

A. Yes, sir, I do.

Q. Do you recall talking to her about a party that was held, sir? Did she make any statements about a party?

A. Yes, Mrs. Milanovich advised us that upon the questioning could she tell us anything regarding the activities of her husband Mike Milanovich, Clay Grimmer or any of the associates who may have visited her with Clay Grimmer, [fol. 1331] their activities on or about June 1, 1958. During this conversation she stated that, as to the best of her recollection, on a Sunday, which we determined to be June 1st, through a calendar, that she believed that this was the date that they had a barbecue and beer party at her home in which several Navy couples, friends of theirs, visited them and had the party.

Q. At that time did she provide you and Mr. Steffen with a list of the names?

A. Yes, sir.

Q. What, if anything, did she have to say, if you recall, Mr. Dobbs, about Clayton Grimmer or Ben Guerrieri, either or both of them, at that party, sir, if you recall?

A. Well, she told Special Agent Steffen and myself that these men, Clayton Grimmer, Ben Guerrieri and another party by the name of Ben, last name unknown to her, had been with them all day and until the late evening, probably 11:00 p.m. at night.

Q. I wonder if you could state if she stated anything about, on that evening, anyone borrowing an automobile?

A. Yes, sir. She told us that around 10:00 p.m. or a little thereafter that Ben Guerrieri, Clay and—had asked Mike if they could have his keys to go and change clothes. She stated that these men left in the car and after they had left, she had talked to Mike about them taking the car. She didn't like it. She told me that they left in the car and she [fol. 1332] didn't see them any more that night.

Q. What, if anything, did she say about Milanovich's condition at that time?

A. She told us that at the time Mike loaned the keys that he had been drinking excessively and had laid down on the couch and had passed out.

Q. Do you recall what she said, if anything, about the automobile when it was returned?

A. I asked her specifically when the next time she saw the automobile was. She stated that she got up the next morn-

ing, came out of her bedroom, and Mike was asleep on the couch, and she went and noticed that the car was in the driveway. I don't recall whether she mentioned at that time or a little later she went out to the car, opened it and she spotted something on the seats, on the floorboard, and it smelled terrible. I asked her, "What did it smell like?" She said, "Well, it smelled like fermenting mash," to her.

Q. During the course of the conversation did Mrs. Milanovich have any telephone calls to or from, that you recall?

A. Yes, sir, she did.

Q. Were you present, sir, at a telephone call that she made to Benjamin—excuse me—did Mrs. Milanovich make any statement to you concerning a telephone call that she made to the residence of Benjamin Guerrieri?

[fol. 1333] A. Yes. She mentioned that since the arrest of Clay and her husband Mike, that she made a telephone call to Ohio, and when Mr. Steffen asked her to whom she had made the call, she stated that she made the call to Benjamin Guerrieri's home. We asked her if she talked to Ben and she said, no, that she had talked to a party there, male party, and she had asked for Ben Guerrieri and this party had told her that Ben was not there. She then told us that she asked for Guerrieri's wife. The party told her that the wife wasn't there. She stated that she told the man answering the 'phone that Grimmer and Mike had been arrested for some safe burglaries on the Navy Bases near Norfolk, Virginia, and that Ben and whoever was involved better get down here and get Mike out of this mess or somebody was going to get hurt.

Q. Were you present when she made this 'phone call?

A. No, sir, I was not.

Q. Mr. Dobbs, do you recall any conversation about tools with Mrs. Milanovich?

A. Yes, sir.

Q. What was that?

A. I asked her if Mike had any tools, and she said, yes, he had several tools but in the tool room. I asked her if he had a lead sledgehammer. She said that she recalled him having such a sledge as I had described to her and that it was in the tool room.

[fol. 1334] Mr. Steffen and myself and she went outside to the tool room. It's located out on the—outside the house, attached to the house, and she went through the tools for two or three or four minutes. She said, "Well, I guess it's missing," said, "Mike had several tools stolen in the last three or four weeks and I guess it's one of them that had been stolen."

Q. Did she indicate at that time, if you recall, sir, whom she thought might have taken those tools?

A. She stated that she now, after the circumstances of the arrest, she figured that Clay Grimmer and Ben Guerrieri had taken them while they were visiting her at various times during the last couple of months.

Q. Mr. Dobbs, the question was raised before. Did you interview some of the people who were at this party, sir?

A. Yes, sir, I did.

Q. Did you discover the correct date of the party, sir?

Mr. Koutoulakos: Your Honor, that would be hearsay insofar as—

The Court: Yes, objection sustained.

Mr. Parsons: They wanted to know and Mr. Dobbs—

Mr. Koutoulakos: I am sure everybody knows the date of the party. Are you finished?

[fol. 1335] Mr. Parsons: Yes.

[fol. 1346] JERRY T. BATTS, called as a witness by and on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Batts, will you state your name and occupation and where you live, sir.

A. Jerry T. Batts, Special Agent, Federal Bureau of Investigation.

Q. Mr. Batts, did you participate in the investigation of the crime that Mr. and Mrs. Milanovich are now charged with, sir?

A. I did.

Q. I call your attention, sir, to the 19th of June, sir, and ask you if you, on that day, asked or interrogated or asked any questions of Mike Milanovich, sir?

A. I did.

Q. I wonder if you would tell the jury about what time that interview took place?

A. Eleven o'clock in the morning.

Q. I wonder if you would tell the jury where that interview took place?

[fol. 1347] A. In the office of the Federal Bureau of Investigation, United States Post Office Building, Norfolk, Virginia.

Q. Was Mr. Milanovich advised of his rights that he might have?

A. He was.

Q. What was the general text of the advice that he was given at that time?

A. He was advised that no threats or promises would be made to him, that any statement he made could be used against him in a court of law and that he was entitled to an attorney.

Q. Was a statement prepared from that interview for his signature, sir?

A. That's right.

Q. Did he sign it?

A. No.

Q. What reason did he subscribe for not signing that statement, sir?

A. Upon advice of his attorney he said he would not sign the statement.

Q. Do you know, of your own knowledge, whether he actually consulted an attorney at that time?

A. Yes.

Q. Did he or did he not talk to an attorney during that [fol. 1348] day, sir?

A. He did.

Q. How do you know, if you do know, sir, that he did talk to an attorney?

A. He talked to an attorney on the telephone.

Q. Did you overhear any of that conversation, sir?

A. No.

Q. Do you recall, sir, Mr. Milanovich making a statement that about April 26th his brother Steve Milanovich and other people came down to visit him from Cleveland, Ohio?

A. That's true.

Q. Whom, if you recall, sir, did he say came down at that time, sir?

A. Clayton Grimmer and his brother Steve.

Q. Did he describe at that time, if you recall, sir, the type of automobile that they came down in, sir?

A. Yes, he mentioned a 19—they came in—it seems as if I recall he said it was a Buick or Oldsmobile automobile.

Q. What did he say about loaning his car on this particular occasion, sir?

A. I believe that was the occasion upon which he said he loaned his car to Clayton Grimmer to visit friends or relatives in Portsmouth, Virginia.

Q. Was that about the end of April or was that in May, [fol. 1349] if you recall, sir?

A. As I recall, that was the latter part of April of this year.

Q. Do you recall Mr. Milanovich talking to you about a visit from Clayton Grimmer around May 2nd, sir?

A. That's right.

Q. What, if anything, did he say concerning that visit, sir?

A. I believe Milanovich said that Grimmer visited him and discussed some personal affair of his brother Steve.

Q. Do you recall that he made any statement about how Grimmer arrived in Norfolk around that time?

A. I believe that's the occasion upon which he said that Grimmer did not drive—have a car.

Q. Do you recall him making any statement, sir, about when he was introduced to Benjamin Guerrieri, sir?

A. Yes, it was—I think he said it was on or about May 16, 1958, that he was home from his office for lunch and he met—he saw Grimmer in the carport and on that occasion he was introduced to Ben.

Q. Do you recall, sir, him making any statements about Clayton Grimmer being at his home on June 1st, sir?

A. Yes, sir.

Q. What, if anything, did he say concerning Clayton Grimmer on June 1st?

[fol. 1350]. A. I think that's the occasion that Milanovich said that he was visiting a friend discussing the Little League Baseball Team and upon leaving his friend's home—was a Sunday afternoon—telephoned his wife and he said, at that time, on the telephone he learned that Clayton Grimmer was visiting his home and he said he asked his wife, what was he there for, and Mrs. Milanovich said—she responded, it was in connection with Steve's affair, and he told—he said that he told her that he was going to the CPO Club and he would be home subsequently; and he arrived home on or about—oh, around 7:00 p.m. that time, that evening, when he talked to Grimmer.

Q. What did he tell you about the balance of that evening, if you recall?

A. Well, when he arrived home at seven o'clock, I think he said he was pretty tired and he talked to Grimmer regarding his brother and Grimmer wanted to borrow his car and he loaned him his car and he said after that he fell asleep.

Q. What happened then? Did he relate what happened then, sir?

A. Yes. He said he awakened the next morning about four or five o'clock and he determined that Grimmer was in the guest bedroom.

Q. All right, sir.

[fol. 1351] A. Asleep.

Q. Was the car there or not?

A. Yes, he said he looked out in the carport and the car was there.

Q. Did he make any comments to you, sir, concerning the automobile on that morning?

A. Yes. He said he drove—he awakened about six o'clock, or approximately six o'clock and went to work and drove the car to work.

Q. All right, sir. Did he make any other comments about the car, that you recall, sir?

A. No, I don't recall offhand, but it would be in—any comment he would have made, if we asked him about that,

would have been recorded in the statement he furnished Mr. Drummond and myself.

Q. Did he make any statement concerning his wife complaining about the car, the condition or anything, if you recall, sir?

A. I believe he did state something about the seat covers being soiled—

Q. All right, sir.

A. —with grease on the seat covers. I remember him saying that specifically.

Q. Do you recall him making any comments about if he allowed Grimmer to stay at his home, sir?

[fol. 1352] A. Yes, I do. He said he allowed Grimmer to stay in his home for the reason that Grimmer had been interested in helping his brother Steve because he, since Grimmer was a friend of Steve, he felt like he should be nice to him.

Q. Did he make any comments about seeing Grimmer or not seeing Grimmer on June 17th, if you recall, sir?

A. Yes. He mentioned he did see Grimmer around June 17th.

Q. What did he say about Grimmer's presence in his home on the 17th or 18th, sir?

A. Around the 17th it seems as if—let's see—there was one of those nights he said he came home and Grimmer was there. I don't recall which night—17th, 18th or 19th.

Q. Now, Mr. Drummond, who actually did the interrogation—

The Court: Batts, isn't it?

Mr. Parsons: What?

The Court: You said "Mr. Drummond".

By Mr. Parsons:

Q. Batts, I'm sorry. Who actually did the interrogation of Mr. Milanovich, if you recall?

A. It was done jointly by Mr. Drummond and myself.

Q. Was Mr. Milanovich browbeaten in any way, sir?

A. No.

Q. Was he permitted to use the telephone to call his [fol. 1353] attorney?

A. He was.

Q. Was he permitted to go about the room freely, sir? He was in custody, of course?

A. That's right.

[fol. 1384]

Newport News, Virginia
December 8, 1958

Appearances: As previously noted.

(The following proceedings occurred in the Judge's Chambers.)

RULINGS ON MOTIONS FOR JUDGMENTS OF ACQUITTAL

The Court: Let the record indicate that at the conclusion of all of the evidence in the case counsel for defendants renewed their motion for a judgment of acquittal as to each of said defendants and as to each of said counts in the indictment. The Court, upon consideration of the charges against the defendant Mike Milanovich as alleged in the fourth count of the indictment, is of the opinion that the motion for a judgment of acquittal as to the defendant Mike Milanovich should be sustained as to the fourth count of the indictment only.

The motion for a judgment of acquittal on the fourth count as to the defendant Virginia Milanovich is denied.

The motion for a judgment of acquittal as to both Mike Milanovich and Virginia Milanovich with respect to the first, second and third counts of the indictment is denied, [fol. 1385] to all of which action the defendants do except.

MOTION FOR ELECTION AND RULING THEREON

Mr. Koutoulakos: Yes, sir. Your Honor, we would like to renew our motion at this time to require the United States Attorney to elect—and we feel, sir—for the jury to be considering both receiving and stealing—that both charges are inconsistent and if the evidence is to be believed that these people are participants, then they cannot be guilty of receiving, and if they are guilty of receiving, they cannot be guilty of participating.

The Court: Do you have any authority for that?

Mr. Koutoulakos: I do not have it with me. Wait. Yes, I do, your Honor. Let me get my notes.

(Discussion off the record.)

The Court: On the renewed motion of the defendants to require the United States Attorney to elect as to whether the United States will proceed against these defendants on the basic charge of theft in the sense that these defendants were aiders and abettors or on the charge of receiving, concealing or retaining to their own use or gain, the Court [fol. 1386] denies the motion and expresses the opinion that under the case of Aaronson against the United States, 175 Fed. 2d 41, a decision from the Fourth Circuit, it is possible that as long as the person did not actually participate in the actual taking of the goods, that same person may be found guilty of receiving and concealing and may also be found guilty as an accessory before the fact or as an aider and an abetter of the actual charge of theft.

Mr. Koutoulakos: Your Honor, we will ask the Court to instruct the jury that inasmuch as they are inconsistent counts that they can only come back, if they come back with a verdict of guilty, as to one or the other, but not both.

The Court: Motion denied.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. Koutoulakos: Your Honor, we move for a mistrial on the basis that inasmuch as the witnesses were instructed not to talk to each other that it deprived the defendants of the full benefit of a fair trial.

The Court: In what respect?

Mr. Koutoulakos: Mr. Guerrieri has already testified and so has Mr. Grimmer that they were talking to each other by some form of communication by notes or by direct [fol. 1387] contact and—

The Court: In what respect?

Mr. Parsons: The notes, if I may be permitted, were in the jail before they came over here.

The Court: That is right, the notes were transmitted in jail.

Mr. Koutoulakos: Before—

Mr. Parsons: Before, as I understood.

The Court: In what respect do you contend the defendants have even been prejudiced, although I must admit that I previously had ruled that the Court could not police these witnesses, but even if the Court could police the witnesses, bearing in mind that there were some, I think, fifty witnesses who testified and an additional, probably, fifteen or twenty who did not testify—I do not know how many there were who did not testify, but there were some, in any event—in what respect do you contend specifically that the defendants have been prejudiced?

Mr. Koutoulakos: Your Honor, the purpose of excluding witnesses—its basic foundation—is for the reason of a possibility of collusion and also to remove any possibility of getting their stories together, and it is our view that safeguard was eliminated at least to the extent that they [fol. 1388] were not instructed not to talk with each other, especially while being witnesses on the stand, and to that extent the testimony could well have been colored by the possibility of them getting together. Now there is testimony here by Mr. Guerrieri to the effect that he also had a newspaper clipping at some point during the proceeding which clipping caused him to send twenty cents and some remark to be given to Virginia. Now—

The Court: According to that, I would have had to police the newspapers as well as the witnesses.

Mr. Koutoulakos: No.

Mr. Parsons: Did you read the morning papers this morning?

Mr. Koutoulakos: No. What I am saying is that certainly information back and forth to witnesses while the case is going on is dangerous.

Mr. Parsons: If I may interpose, I never heard any restriction that anybody cannot read a newspaper while a trial is going on.

Mr. Koutoulakos: That is not my point, that they cannot read a newspaper. My point is, it is obviously that certainly he has availability to other testimony.

The Court: In any event, let's deny the motion and proceed then.

(The Court, counsel and the court reporter returned to the courtroom at 9:50 a.m.)

The Court: Gentlemen, do you desire the jury polled?

Mr. Parsons: Waive the jury poll, your Honor.

Mr. Koutoulakos: Waive it.

COURT'S STATEMENT TO JURY

The Court: Members of the jury, at the conclusion of all of the evidence in the case, the Court had before it for consideration various motions, and with respect to the fourth count of the indictment, the Court has sustained a motion for a judgment of acquittal as to the defendant Mike Milanovich only.

Now, the fourth count of the indictment charges that these defendants on or about the second day of June 1958 did unlawfully receive, conceal and retain with intent to convert to their own use or gain, knowing it to have been stolen or purloined, certain items of value of the United States Navy Department, namely, fourteen thousand odd dollars in lawful currency of the United States. There is a distinction between the actual theft of property and receiving, concealing and retaining that property. Without summarizing the evidence and with no attempt to do so, it is my recollection of such monies, if any, that were taken from the Little Creek Amphibious Base on the early morning of June 2nd, that that money was apparently hidden or buried on the property of the Little Creek Amphibious Base and was not taken off the premises on that particular early morning.

As to that money, if any was taken, the evidence only shows, if it does show, that a portion of that money was apparently found in the Milanovich home on the early morning of June 19, 1958. There is some evidence that the money was counted during the night of June 18th or the early morning of June 19th by Grimmer. There is some evidence that Virginia Milanovich saw it being counted and also some evidence that she assisted in the counting. I do not suggest to you what would be the true facts, but I want to try to explain to you why I do not think there is sufficient evidence for you to consider any implication of guilt

of the defendant Mike Milanovich as to that count of the indictment.

The only evidence as to what Mike Milanovich may have done that night is that he came in—and I believe that he [fol. 1391] was in some state of inebriation at the time—and that he went to bed. He stated specifically that he had no knowledge that any money was in the house at that time, that is, any money taken from any particular place, and all of the testimony points to that effect. Now, as I will explain to you later, that does not exonerate, nor does it convict Mike Milanovich of the charge of participating in the theft of that money, that is, in the sense that he may have been, and I do not suggest to you that he was, an aider and an abetter in the theft of the money, but as will be explained to you later, there is a distinction between the theft of the money and being an aider and abetter in the theft of the money and the charge of receiving, concealing and retaining with intent to convert to your own use or gain; and as I see it, the only evidence that could possibly implicate Mike Milanovich on the charge of aiding and abetting and concealing with respect to—aiding, abetting, the receipt, concealment and retention of the money taken from the Little Creek Amphibious Base would be the fact that it was found in a home occupied by him and that he slept there for a few hours that early morning of June 19th. [fol. 1392] Now, in so ruling, I do not suggest to you that Virginia Milanovich is or is not guilty under this fourth count of the indictment, which is the receiving, concealing and retaining with intent to convert to her own use or gain, nor do I suggest to you that either Mike Milanovich or Virginia Milanovich are or are not guilty under the first, second and third counts of the indictment, but it becomes my duty, when I feel that there is insufficient evidence for you to consider the guilt of a particular defendant on a particular count in the indictment, to grant a motion for a judgment of acquittal as to that count, and so as to the fourth count of the indictment I have granted the motion for a judgment of acquittal as to the defendant Mike Milanovich alone.

I do not know whether it is very clear to you, but I have endeavored to explain it to you because I think that any-

time a court takes a particular issue away from a jury which has been called here to determine issues of fact, that I owe it to you to explain to you, if I can, why I have eliminated the question of the guilt or innocence of Mike Milanovich as to the fourth count of the indictment. So that defendant Mike Milanovich will be before you as to [fol. 1393] the first, second and third counts of the indictment and the defendant Virginia Milanovich will be before you as to the first, second, third and fourth counts of the indictment. So if and when you reach the fourth count of the indictment in the course of your deliberations there is no need for you to even consider Mike Milanovich's participation, if any, in that, because it has been taken away from you. You may, however, of course, consider to what extent, if any, Virginia Milanovich may have received, concealed and retained with intent to convert to her own use or gain the proceeds of the monies taken from the Little Creek job or any portion of those proceeds."

With that preliminary statement, may I say further to you that as the Government carries the burden of proving the guilt of these defendants beyond a reasonable doubt, the Government has the opportunity to present the opening argument, after which defense counsel have the opportunity to present their arguments, and the Government then has an opportunity to reply, which is a final argument prior to the submission of the case to you through the Court's charge.

Mr. Parsons, you may now proceed with the opening [fol. 1394] statement in behalf of the United States."

Mr. Parsons: Thank you, your Honor.

(Mr. Parsons thereupon made his closing argument on behalf of the Government.)

The Court: Mr. Davis?

Mr. Davis: If your Honor please, may we have a brief recess at this time?

The Court: Yes. All right, Members of the jury, if you care to step out, you may do so.

(The Court recessed at 10:50 a.m.)

(The Court reconvened at 11:00 a.m.)

The Court: Gentlemen, waive the jury poll?

Mr. Koutoulakos: Yes, your Honor.

The Court: Mr. Davis, you may proceed. I believe you are taking the initial argument.

(Thereupon, counsel concluded their closing arguments.)

The Court: I think, at this time, we will take a brief recess, a five minute recess.

[fol. 1395] (The Court recessed at 12:15 p.m.)

(The Court reconvened at 12:25 p.m.)

The Court: Gentlemen, waive the jury poll?

Mr. Koutoulakos: Yes, your Honor.

The Marshal: Everyone remain seated and quiet while his Honor charges the jury.

CHARGE TO JURY

The Court: Members of the jury, at this point it becomes my responsibility to charge you or to instruct you with respect to the principles of law which should guide you in your deliberations when you retire to begin your consideration of this case. You are the judges of the facts; I am the judge of the law. Nothing which I may have said during the course of these proceedings and nothing which I say to you now should be taken by you as any expression of opinion on my part as to the facts of the case, because those facts, under our system of jurisprudence in this country, are determined solely by the jury when a jury is convened for the purpose of trying a case.

An indictment will be handed to you at the conclusion of my comments from which you will note that three defendants were indicted on four separate and distinct counts. The defendants named in that indictment are Mike Milano- [fol. 1396] vich, Virginia Milanovich and Benjamin Thomas Guerrieri. Of course, you already know that you have nothing to do with the guilt or innocence of the defendant Guerrieri and, for all practical purposes, you may disregard the fact that his name is mentioned in the indictment as the evidence clearly shows that Guerrieri has heretofore

pled guilty to the charges, or one or more of the charges, in the indictment. The indictment was returned by the Grand Jury on July 16, 1958.

Now, the finding by a Grand Jury of an indictment against any person charged with a crime does not constitute any presumption or evidence of guilt. The Grand Jury ordinarily hears only the Government witnesses, and then only sufficient to enable the Grand Jury to determine that an accused person should be put upon his trial. The Grand Jury has nothing to do with the guilt or innocence of a person accused of crime. That is your duty in your capacity as a trial or petit jury; and so when you retire to consider the case, the mere fact that an indictment has been returned against these two defendants has nothing to do with the case. And may I say further, the fact that the Government has elected to proceed under a joint indictment against Mike Milanovich and Virginia Milanovich jointly raises no presumption that either one of these defendants is guilty. That is a procedural matter and has [fol. 1397] nothing to do with your consideration of the case. Each defendant is entitled to a fair and separate consideration of the merits of the Government's case against that particular defendant and as against each particular count named in the indictment.

I have previously indicated to you, of course, the fact that the defendant Guerrieri has pled guilty to the charge in the indictment should not be considered by you as any indication that either Mike Milanovich or Virginia Milanovich is guilty. Of course, on the contrary, the two defendants now before you are presumed to be innocent and that presumption of innocence remains with them throughout the entire case until it is repelled by competent proof.

Now, the indictment containing four counts, all of which are applicable as to the defendant Virginia Milanovich and the first three of which are applicable as to the defendant Mike Milanovich, charges substantially as follows, and I shall not reread the exact language of the indictment, but in the first count it charges that on May 17, 1958, these defendants did unlawfully steal or purloin the approximate sum of \$23,627.64 alleged to be the property of the United States Navy Department.

Now, I think that I can say at the outset that there is no evidence of the fact that either Mike Milanovich or Virginia Milanovich actually opened any safe or actually removed any of the contents of any safe, and so, as I will [fol. 1398] explain to you shortly, the question of their guilt, if any, or the guilt of either, if any, on the actual theft charges both from the Naval Exchange at the Naval Air Station and from the Commissary Store at the Little Creek Amphibious Base, must rest upon whether the fact these two defendants or either of them participated as aiders and abettors in the commission of a crime, and I will explain that to you a little bit more in detail. I might say, in passing, that if they did participate as aiders and abettors, then they may be found guilty as principals. And, of course, the second count of the indictment charges these two defendants with the alleged theft of June 2, 1958, at the Amphibious Base—basically the same charge, the amount is different, of course—fourteen thousand and some dollars.

Now, the third count relates to the May 17th alleged theft, but it states a separate charge, that is, that these defendants did unlawfully receive, conceal and retain with intent to convert to their own use or gain, knowing that the property had been stolen or purloined, this quantity of money. Now, of course, if they had actually removed the contents of the safe themselves, they cannot be guilty of receiving those same contents, but the evidence is clear in this case that neither Mike Milanovich or Virginia Milanovich actually had their hands on the safe or removed any money from any safe. There is no question about that. So, therefore, if they received any money—and I do not suggest to you that they did or did not receive any money—they must have received it from some other party, and then we go into the discussion of whether or not they received, concealed or retained any portion of the money with intent to convert to their own use or gain and with knowledge of the fact that this money had been stolen or purloined.

And the fourth count is a similar count, only it relates to the June 2, 1958, alleged theft at the Little Creek Amphibious Base, and the ultimate unlawful receiving, con-

cealing and retaining with intent to convert to their own use or gain, knowing it to have been stolen or purloined, the quantity of money or portion thereof aggregating roughly \$14,000.00; and I have eliminated the defendant Mike Milanovich from that fourth count for the reasons that I have explained to you, and I will not reiterate them.

Now, let's look at what Congress has stated is the specific offense for which these defendants are charged.

Congress has enacted the following statute: Whoever embezzles, steals, purloins, or knowingly converts to his own use or the use of another any money or thing of value of the United States or of any department or agency thereof or whoever receives, conceals, or retains the same with [fol. 1400] intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted, shall be guilty of a felony if the value of the property exceeds the sum of \$100.00. And the word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

I do not think we have to worry about that consideration because here we are dealing with money, and I cannot tell you anything more about what the value of the dollar bill is. I admit that it fluctuates from time to time for reasons that we do not have apparent in this case, but we are dealing here with money, and I do not think it is necessary for me to discuss it further, the question of value.

Now, what are the elements that are basically necessary to prove these crimes? Well, some of them are as follows: In the first place, the money that was taken—and apparently some money was taken—must be established beyond a reasonable doubt to have been the property of the Department of the Navy or of some agency of the United States. Counsel have not mentioned that in their arguments. I can only say to you that you have heard the evidence as to the ownership of the funds involved. I will state to you that it is unnecessary that funds be appropriated by Congress as an essential element of ownership by the United States Government. In other words, ownership of property [fol. 1401] or monies may come about even though Congress has not appropriated money for that specific use. The test, as I see it, would be this: If the Navy Exchange

or the Commissary Store had been dissolved as of the various dates of these crimes, alleged crimes, who would rightfully or who could rightfully claim the ownership of the assets? Could it be the United States or would it be the United States or any agency thereof? And if you are satisfied that it would be the United States or any agency thereof—and I will tell you as a matter of law that the Department of the Navy is an agency of the United States or a department of the United States—then, if you are satisfied beyond a reasonable doubt that the ownership would vest there, then you can pass on beyond that question and consider other elements of the crime.

I have indicated that the value of the property taken or received or concealed, as the case may be, must be shown to be in excess of a hundred dollars; but it is not necessary for the Government to prove the exact amount of money taken. If, however, you reach the conclusion as to any one count that the amount taken, for instance, under the theft count or the amount taken, for instance, under the receiving and concealing count was not more than \$100.00, then you should so specify in your verdict if you find a verdict of guilty. If you believe beyond a reasonable doubt that the [fol. 1402] amount, taken under each of the particular counts involved was in excess of a hundred dollars, then you need not specify any value or amount in arriving at your verdict in the event you find a verdict of guilty on any particular count as the United States has charged in the indictment, or that the Grand Jurors have charged in the indictment; I should more specifically state, that the value of the property taken or concealed was in excess of a hundred dollars.

Now, as to the count relating to the receiving, concealment or retention, it is necessary for the Government to prove beyond a reasonable doubt an intent to wrongfully appropriate or convert that money to that individual defendant's own use or gain. I mentioned some of those basic elements of the crime and now, of course, we turn to the main elements that I must mention, and that is the actual theft of the money, and I use that word because we are not here charging any particular individual with breaking into a safe as such. We are charging with theft of the

money and the actual basic elements of receiving, concealing or retaining with intent to convert to one's own use or gain with knowledge of the fact that that particular money had been embezzled, stolen, purloined or converted.

Under the law, Members of the jury, any person who, with knowledge, of the intended commission of a crime [fol. 1403] or with knowledge of the fact that a crime has been committed, aids, assists, abets or counsels another in the commission of that crime is just as guilty as if he were the principal and sole offender; and so in this case if either of these defendants now before you had knowledge of the fact that a crime was to be committed and assisted or aided in committing the offense as charged in the indictment, then that particular defendant would then be guilty as if he were the sole participant, for if a person does any work with knowledge that a crime is being committed or is about to be committed, then that person is an aider and abetter.

Now, from that you will note that mere knowledge that a crime is about to be committed is not sufficient to make one an aider and abetter, nor is it sufficient if a person, acting without knowledge of the fact that a crime was about to be committed or just had been committed, in some manner innocently aids or abets an individual. There must be present the combination of knowledge of the commission of the crime and some affirmative act, no matter how small, which assisted or aided in the commission of the crime.

Now, in ascertaining whether or not either of these defendants is or is not guilty, I must remind you of certain fundamental binding principles of law which are controlling upon every jury in a criminal case throughout this Nation. These are to be strictly adhered to and no matter how many [fol. 1404] times you may have heard them, they cannot be repeated too often, and I will mention them to you as briefly as possible at this time.

These defendants come into this court charged with these crimes, but they come in presumed to be innocent and this presumption of innocence is an abiding one and follows each of them throughout the entire case and applies at every stage of the case until it is repelled by competent proof. That competent proof is proof beyond a reasonable doubt, for the burden rests upon the United States to prove be-

yond a reasonable doubt the guilt of the particular defendant, as the case may be, before that defendant can be convicted, and mere suspicion or probability of guilt, however strong, is not sufficient to convict, nor is it sufficient to convict if the greater weight or preponderance of the evidence supports the charge or charges in the indictment. If the acts and conduct of the defendants are just as consistent with their innocence as with their guilt, the evidence would not be sufficient to convict them. To warrant a particular defendant's conviction the evidence must be so conclusive as to exclude every reasonable theory of their innocence.

Now, when we speak of reasonable doubt, Members of the jury, that is a doubt founded upon your sound and reasonable judgment after a fair consideration of all of the evidence [fol. 1405] in the case. A doubt that is engendered solely by sympathy for an individual or by dislike to accept the responsibility for convicting an individual is not a reasonable doubt. The law does not require absolute certainty, nor does it require proof beyond all possibility of mistake. Reasonable doubt is that kind of doubt which would make a reasonable person hesitate to act in matters affecting his own important affairs of life; and so if, after a fair and dispassionate consideration of all of the evidence, you reach a point where you can say upon your conscience and judgment that you would not hesitate to act in matters affecting your own important affairs of life, that you are morally certain of the guilt of the particular defendant on the particular count as charged and that you cannot reconcile the evidence with any reasonable theory of innocence, you will then have been convinced beyond a reasonable doubt and it would then be your duty to find that particular defendant guilty on that particular charge or count in the indictment. On the other hand, if it does not satisfy your judgment and conscience to that degree of certainty that will enable you to say that you are morally certain of the defendant's guilt—or the defendant or defendants guilt—or that as reasonable persons you hesitate to act in matters affecting your own important affairs of life, then it is your duty to return a verdict of not guilty as to that particular defendant and

[fol. 1406] that particular count in the indictment which you are then considering.

May I say in determining the guilt or innocence of an accused person and in determining the issues that are necessary to lead to the conclusion of guilt or innocence, you are told that the United States is not required to prove all of the facts by direct evidence. Circumstantial evidence is legal and competent in criminal cases, and if it is of such a character as to prove the guilt of the accused person beyond a reasonable doubt, then circumstantial evidence is entitled to the same weight as direct evidence.

You, as jurors, may allow unimpeached circumstantial evidence to overcome negative or questionable oral evidence.

On the question of intent and in dealing with the question of intent, you need only consider it as to the charge with respect to receiving, concealing or retaining to one's own use or gain. I say to you that if there is a question of intent as to breaking into the safe, that is perfectly obvious. Anyone who breaks into a safe during the night hours automatically has, whatever it may be, the required criminal intent, although we are not dealing with the question of intent on that charge. There we are dealing with the question of knowledge on the part of these two defendants, if any, and the question of whether or not they did any affirmative act as an aider and abetter in assisting in the perpetration of the crime, but on the receiving and concealing count it is necessary that there be what is known as an intent to convert to one's own use or gain; that is, a wrongful intent and a wrongful intent involves an act which is intentional or knowing or voluntary as distinguished from an honest or bona fide intent. Of course, one cannot be ignorant of the law to such an extent to say that where the facts are open and obvious and you just say, "I have no knowledge of the facts." Intent and wilfulness, and I might say as well as knowledge, are states of mind and they cannot be proved by direct or testimonial evidence and can only be proved indirectly from inference from circumstantial evidence; and so in considering, certainly as to the receiving and concealing counts of this indictment, whether the defendants or either of them had the knowledge, intent

and wilfulness necessary for the crime charged, you must and should consider all of the pertinent circumstances which you think have been proven beyond a reasonable doubt which may reflect that state of mind. In substance, what you have to do is to look into the mind of the particular defendant through the circumstances and facts of the case.

We come now to a discussion of the credibility of witnesses, by which is meant their worthiness of belief and the weight to be given to their testimony. When I speak of witnesses in this regard, I mean all of the witnesses [fol. 1408] that have taken the stand, including the two defendants, both of whom have testified. It is your function to determine which witness to believe and to what extent you are going to believe that witness. There is no absolute or arbitrary guide or measure by which a jury may determine the truthfulness or untruthfulness of a witness. Among the things which you may properly consider in such determination are whether the witness has any motive or reason for being truthful or untruthful in his or her testimony, whether there has appeared from the attitude and conduct of the witness any bias, prejudice or feeling which may cause his or her testimony to be influenced thereby, whether his or her testimony bears the earmarks of truthfulness or untruthfulness and to what extent it is corroborated or confirmed by other testimony which is not questioned or to what extent it is corroborated or confirmed by the known or admitted facts. You may consider the prior inconsistent material statements, if any, of the witnesses who have testified in this case, whether said statements be written or verbal and whether under oath or not under oath and to what extent, if any, such prior inconsistent statements affect the credibility or truthfulness of such witness' testimony, and you, as jurors, should determine whether such witness' testimony should be accepted or disregarded either in whole or in part, depending upon how [fol. 1409] you regard the seriousness of the inconsistencies of such a witness' statements. You may also consider the intelligence of the witness and his or her opportunities to have accurate knowledge of the matters to which he or she

has testified. In other words, you may consider the testimony of the witnesses in connection with all of the facts proven in the case and which are apparent to you and from them determine the degree of credibility that the jury should give to the witnesses and the weight that should accorded (sic) to their individual testimony.

The United States has introduced the testimony of Clayton Thomas Grimmer, Benjamin Thomas Guerrieri and one Christ Sofocleous—

Mr. Koutoulakos: Sofocleous, your Honor.

The Court: Sofocleous, I guess that is the pronunciation, Members of the jury. They have been introduced as witnesses and they, according to their own testimony, participated in the offenses charged in this indictment. I say that with the exception of Sofocleous who has testified that he participated only in the Little Creek Amphibious Base theft. Those individuals occupy the position of accomplices. It is a general principle of law in considering the credibility of witnesses that the testimony of accomplices is open to suspicion, that they may be actuated by self-interest, that such testimony should be carefully weighed and tested [fol. 1410] before giving it unlimited credence and that it is not safe to accept it as conclusive unless it is corroborated by the testimony of other persons or by facts and circumstances clearly tending to support it. However, I charge you that the testimony of an accomplice is competent evidence and it is for you, as jurors, to pass upon the credibility of such testimony, and if the testimony of an accomplice carries conviction and you, as jurors, are convinced of its truth, then you, as jurors, should give to it the same effect as would be allowed to a witness who is in no respect implicated in the offense.

The defendant Mike Milanovich has introduced evidence as to his previous good character. Such evidence should be considered by you and given such weight as it is entitled to receive when considered in the light of all of the other testimony. If Mike Milanovich, by his conduct, has built up a reputation for good character, it is certainly a fact which should be considered and the benefit of which should be given to him, but it is only one fact to be considered along

with all other facts and previous good character should never permit a person to escape conviction of a crime if, considering all of the facts including the fact of previous good character, you are satisfied of his guilt beyond a reasonable doubt. I charge you, however, that if the evidence as to any material fact in the case is conflicting, [fol. 1411] then the evidence of the good character of Mike Milanovich may, if you as jurors think it should, resolve such doubt into a reasonable doubt.

May I say with respect to the question of any punishment which may be imposed upon either defendant in the event either defendant is found guilty, this is solely my responsibility. You are concerned only with the determination of the matters of fact and the issue that has been submitted to you for determination is whether or not these defendants or either of them are guilty of the offense or offenses which they are respectively charged with in the indictment. Your verdict will be in the nature of a report to the Court upon the truth of the charges here made, and when you have done this your responsibility as jurors will be at an end as far as this case is concerned. You, of course, are not concerned with the wisdom of the law or the method of the enforcement of the law.

Some of you, perhaps all of you, have served on juries previously, but I think that I should mention at this point, when you return to your jury room, the first thing that you do is select one of your members as foreman or forewoman. That individual votes as any other member of the jury does. His or her principal function is to see to it that every juror has an opportunity to express his or her views in an orderly manner and to vote according to the dictates of their [fol. 1412] conscience. It is the duty of the foreman or forewoman to sign as foreman or forewoman such verdict as you arrive at. To the verdict, he or she should sign his name with the word foreman or forewoman, as the case may be, under it and down in the left-hand corner place the date.

Your verdict must be unanimous.

May I say to you that with respect to the form of your verdict you, of course, have four counts. As to Virginia

Milanovich, she is before you on all four counts; as to Mike Milanovich, he is before you on only the first, second and third counts. I would suggest that you return separate verdicts as to each particular defendant unless you reach the conclusion that both of the defendants are not guilty. If you reach the conclusion that both defendants are not guilty of any of the charges in the indictment, the form of your verdict would be, "We, the jury, find the defendants not guilty as charged in the indictment." In the event you reach the conclusion that the defendant Mike Milanovich is guilty of either the first, second or third counts in the indictment, any one ~~of~~ the combination of all, the form of your verdict would be, "We, the jury, find the defendant Mike Milanovich guilty as charged in the indictment in the," and then name the count or counts. And if you find him not guilty on certain counts as charged in the indictment, [fol. 1413] it would be guilty on certain counts, not guilty on other counts, and likewise then return a separate verdict as to the defendant Virginia Milanovich—"We, the jury, find the defendant Virginia Milanovich," in the event you reach the conclusion that she is guilty of any of the charges, "guilty as charged in the," and then name the count or counts, as the case may be, and then not guilty if you find her not guilty on any specific count.

Now, Miss Knight and gentlemen, I do not intend to suggest to you that either of these defendants is or is not guilty on any one of the counts or on all of the counts. That is purely for you to determine, and when I recited the the form, I am merely giving you the form for illustration purposes in the event you reach the conclusion that the defendants are not guilty or the defendants are guilty on one or more counts and each particular verdict, if you do find any verdict of guilty, I would suggest you write a—you need not write a separate—it need not be signed twice, but the first paragraph will deal with the defendant Mike Milanovich, the second paragraph will deal with the defendant Virginia Milanovich, and then signed by your foreman or forewoman and date it.

We come to two other matters. One is the question of the exhibits. The exhibits ordinarily are taken into the jury

room. We have here some rather bulky exhibits, and I am [fol. 1414] not going to order those exhibits taken to the jury room unless it is specifically requested by counsel that some particular exhibit or exhibits be taken to the jury room, or unless the members of the jury desire any particular exhibit or exhibits. There are, however, certain other exhibits that have been introduced which the Clerk has been able to handle on the desk, and as to those exhibits, they will be handed to you. Bear in mind, however, you may, at any time, call for any particular exhibit or exhibits and they will be brought to you.

We have now reached the hour of one o'clock, which is ordinarily the hour for luncheon recess. If you decide to eat lunch, you will eat lunch at the expense of the United States Government. You would have to be kept together, I think. It is not required by law, but in view of the fact that you will have had everything before you and the only thing remaining is your consideration of the case, I think it advisable to keep you together for luncheon recess.

May I ask you at this time to retire, take with you the indictment and the exhibits that will be handed to you, and then come back down and advise me whether you wish to deliberate or whether you wish to go to lunch at the Warwick Hotel—I guess it is the most convenient place—at the expense of Uncle Sam.

[fol. 1415] Mr. Parsons: If your Honor please, the Government would not have any objection to any of these they want to examine in this room, and I do not think Mr. Koutoulakos would.¹

Mr. Koutoulakos: No.

Mr. Parsons: And, of course, I think other people should be excluded at the time of the examination.

The Court: Yes. If, at any time, you want to come down in the room and examine the exhibits, we will clear the courtroom, including myself, and examine such exhibits you desire. The main thing at this time is for you to determine what you desire to do for lunch.

Mr. Koutoulakos: Your Honor, the main thing I ask is—I see it is going in—the November 5th letter.

The Court: Everything is going in except the heavy equipment. Before you actually begin your deliberations,

ladies and gentlemen, may I say to you, if you elect to eat lunch, then I want the alternates to eat with you at this time. If you do not elect to eat lunch, send down the two alternates, if you will, if you are going to begin your deliberations.

A Juror: What time are we due back here, Judge?

The Court: That will be optional with you. I am going to let you go upstairs. Whatever you want to do about lunch will be your determining factor. If you begin de-[fol. 1416] liberations, though, send down our two friends, the alternates.

(The jury retired to the jury room at 1:05 p.m.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Mr. Parsons, do you have any suggestions as to the Court's charge?

Mr. Parsons: None, your Honor.

The Court: Mr. Koutoulakos, would you like to take any exceptions to the Court's charge?

Mr. Koutoulakos: Yes, I do, your Honor. I feel, as a matter of law, that the case should have been dismissed and a charge was not necessary.

The Court: Are there any other exceptions?

Mr. Koutoulakos: Yes. I feel they were not fully instructed on the law of larceny and receiving.

The Court: What would you suggest that I add in there?

Mr. Koutoulakos: Well, it is my view that larceny is the unlawful taking and carrying away with intent to criminally deprive and an aider and abetter, as the Court defined it, is principally aiding and abetting in the crime. In receiving, it must be the elements of such that the elements be proven together with knowledge of the wrongful theft and a receiving with that knowledge—

[fol. 1417] The Court: Did you submit to me any request for written instructions along those lines?

Mr. Koutoulakos: No, sir, I did not.

The Court: Now, of course, you are clearly right that larceny is the taking of the property of another without their consent and with the intention of keeping it to their own use.

Mr. Koutoulakos: Yes.

The Court: If you want me to call the jury back, I will be glad to do so; however, I feel there is some obligation on the part of counsel not to come in at the last minute and make some technical objection as to a definition when those definitions could clearly have been given to the Court, in any event.

Mr. Koutoulakos: Well, your Honor, I feel that the definition of larceny is one—it does not require any special research—it's just a general definition.

The Court: I agree.

Mr. Koutoulakos: I agreed for your Honor to instruct them, but your Honor has to instruct them. As long as we agree for you to instruct, you have to instruct them properly, you do admit that.

The Court: Of course, I have to instruct them properly, but I have instructed them on the definition of the word "larceny". If you have a definition of the word "larceny", [fol. 1418] I shall be glad to give it to the jury, and if not, I shall be glad to give it myself. However, I think it is hardly necessary—if anyone does not know what stealing means and if the particular offense in this case, if any was committed—I am not saying the defendants were involved, but if the breaking into a safe and taking money is not larceny, I do not know what a larceny is.

Mr. Koutoulakos: Well, I agree with your Honor and these people admit that these people were not there at the time of the taking at the safe. Now, I do have a very strong objection as to your Honor's definition as to what type of circumstantial evidence it takes to convict. It has always been my understanding that that circumstantial evidence must be so strong and so conclusive that it can leave no other hypothesis to the jury. I realize your Honor did show me a case with that language out of it.

The Court: In the case of Holland against the United States, decided by the Supreme Court of the United States on December 6, 1954, the Court expressly disapproved of the use of the words "such as to exclude every reasonable hypothesis other than that of guilt in considering the matter of circumstantial evidence where the jury has been

fully instructed otherwise on the requirement with respect to the burden of proof beyond a reasonable doubt."

Mr. Koutoulakos: Now, your Honor, as to the question [fol. 1419] of larceny, we do not deny that a larceny was committed. It is a question of whether these folks committed it.

The Court: Then why is it necessary for me to define larceny?

Mr. Koutoulakos: I do not know. I was thinking in terms of these people aiding and abetting in the larceny, is what I had in mind.

The Court: Well, I have instructed them rather fully on the question of aiding and abetting. I have stated that these defendants must have had knowledge and they must have committed some affirmative act to aid and abet.

Mr. Koutoulakos: There is no question that a larceny was committed.

The Court: Well, I do not think I am going to worry about instructing the jury further as to the definition of the word "larceny" if it is conceded that a larceny was committed.

Are there further exceptions to the Court's charge?

Mr. Koutoulakos: I believe that is all, your Honor. Thank you.

The Court: Have you heard anything yet?

The Marshal: Haven't heard anything yet.

• The Court: Do they wish to eat?

[fol. 1420] The Marshal: They are taking a vote to see whether to eat or stay.

The Court: I see.

The Marshal: Your Honor, they said they wish to eat first.

The Court: All right. Mr. Marshal, will you arrange over at the Warwick Hotel and try to accompany—they need not sit all at one table. Try to keep them away from others. It is not a case that they have to be kept together. I am not ordering them to be kept together, but I want you to see to it that nobody bothers them. I think it is all right if you take them right over and try to make the arrangements.

The Marshal: What time do you want them to come back?
The Court: Let them suit themselves. I'd say 2:15, approximately.

The Marshal: 2:15.

The Court: Feed the alternates too.

The Marshal: All right.

Do you want to recess until 2:15?

The Court: Yes, Court will recess until 2:15. You can take the jury out yourself.

(Thereupon, at 1:15 p.m. a recess was taken until 2:15 p.m.)

[fol. 1421]

AFTERNOON SESSION

(The Court reconvened at 2:15 p.m.)

The Court: Waive the jury poll?

Mr. Parsons: The Government waives it, your Honor.

Mr. Davis: Defense waives.

The Court: All right, we have all fourteen present; and at this stage it becomes my either pleasant duty or unpleasant duty to relieve the two alternates from any further service. May I thank you very much for your patience and kindness, but we are not permitted, when it comes to deliberating, final deliberation, to send the alternates in with the jury. May I say to the two alternates, in addition to thanking them for their services, it is my suggestion that you not confer with anyone about what, if anything, you may have heard from any of the other jurors during the course of deliberations. In the first place, sometimes those thoughts may change, and if anyone inquires of you what the jury is going to do, you just tell them you do not know and let it go at that, and with that comment, may I excuse the regular jury panel. You may retire at this time. If, at any time, you wish to come back and look at the bulky exhibits, if you will send word by the Marshal, the Marshal is available and will be at your call at all [fol. 1422] times. Of course, he is only to serve you and not to answer any questions.

You may retire at this time. The two alternates may be excused.

(The jury retired to the jury room to deliberate on their verdict at 2:35 p.m.)

The Court: The Court will recess until the jury returns.

(The Court recessed at 2:35 p.m.)

(The Court reconvened at 5:00 p.m.)

PROCEEDINGS OUT OF THE PRESENCE OF THE JURY

Mr. Koutoulakos: Your Honor, before the jury comes in, I would like to note my exception for the record to the Allen charge.

The Court: Yes, I will give you an opportunity to note it after I have given it. I never know what they are going to do.

(Thereupon, the jury returned to the jury box.)

The Court: Gentlemen, waive the jury poll at the present time?

Mr. Koutoulakos: Yes, your Honor.

[fol. 1423] Mr. Parsons: Yes, sir.

FURTHER CHARGE TO JURY

The Court: Members of the jury, I have called you back in at this time to give you a supplemental instruction. I realize that in a case as long as this has been it is a very difficult matter for you to review the evidence, and I would be the last one to suggest that you do it in a hasty or hurried fashion. On the other hand, by reason of the fact that it has been a long trial it presents problems that have not confronted you before, and I think that I should tell you and, as we all realize, that in a large portion of cases absolute certainty cannot be expected; and while the verdict finally arrived at must be the verdict of each individual juror and not just a meek acquiescence in the conclusions of his fellow jurors, yet each of you should examine the questions submitted with candor and with proper regard and deference to the opinions of each other. It is the duty

of jurors to decide cases if they can conscientiously do so. You should listen with the disposition to be convinced to each other's arguments. If much the larger number are for conviction, a dissenting juror should consider whether his doubt is a reasonable one which made no impression upon the minds of so many men or women equally honest and equally intelligent with himself. If, on the other hand, the majority is for acquittal, the minority should ask themselves whether they might not reasonably doubt the correctness [fol. 1424] of a judgment which is not concurred in by the majority. And, as I said before, while undoubtedly the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room.

The very object of the jury system is to secure unanimity by a comparison of views and by arguments among the jurors themselves. A juror should listen with deference to the arguments and with a distrust of his own judgment if he finds a large majority of the jury taking a different view of the case from what he does himself. Every juror should not go into the jury room with a blind determination that the verdict shall represent his opinion of the case at that moment or that he should close his ears to the arguments of men and women who are equally honest and equally intelligent with himself.

I give you that further instruction at this time as you have been out approximately two hours and a half. I do not know whether the instruction will assist you in any way. It has nothing particularly to do with respect to this particular case any more than it does with every case that is tried, but it is sometimes good for the jury to know generally what factors could guide them after they get in the jury room; and with that supplemental instruction, may I ask you now to return to the jury room, unless you [fol. 1425] have some particular question one of you would like to ask.

May I say to you that I have nothing to do with how you stand, and I do not want to know how you stand. I merely would like to find out if there is anything that I can help you along on from the standpoint of, what I can do.

I do not know that there is much that I can do. I cannot decide the case for you, but if you have any particular request for further instruction, I stand ready at all times to give you that further instruction.

If there are no further questions, would you retire at this time to the jury room.

(The jury retired to the jury room at 5:05 p.m. for further deliberations.)

The Court: Mr. Koutoulakos, you wish to except to the Court's giving the supplemental charge?

Mr. Koutoulakos: Your Honor, I do want to take an exception to that instruction. I feel that with that charge there also should have been given the additional charge that no juror should give up his honest conviction.

The Court: I think that the charge is given verbatim in the case of *Orton against the United States*, 221 Fed. 2d 632, a decision in the Fourth Circuit, which opinion I had [fol. 1426] shown you just before I gave the charge.

Mr. Koutoulakos: Yes, sir, I would not be telling the truth if I said I did not see it. I certainly did.

The Court: And after you look at it, you will find the charge was verbatim. I did not deviate one word. I hate to change, deviate.

Mr. Koutoulakos: Might I make this further statement. It takes away from the jury unanimity, to give a unanimous decision, and it takes away a lot of things that are—

The Court: Yes, I do not think that is true, however, and my practical experience, that I related to you a few moments ago, is that it will bring a verdict for the defendant just as rapidly as it will bring a verdict for the prosecution, and also in a civil case with some modification, of course. You will find that it brings a verdict one way or the other without any difficulty. However, your exception is well noted.

Mr. Koutoulakos: Thank you.

The Court: And you need not worry about that.

Mr. Koutoulakos: Thank you, Judge.

The Court: The Court will recess.

(The Court recessed at 5:10 p.m.)

[fol. 1427] PROCEEDINGS OUT OF THE PRESENCE
OF THE JURY

(The Court reconvened at 6:19 p.m.)

The Marshal: They said they were getting together to see what time they wanted to go to supper.

The Court: All right.

(The jury returned to the jury box.)

The Court: Gentlemen, waive the jury poll?

Mr. Koutoulakos: Yes, sir.

Mr. Parsons: Yes, sir.

The Court: Members of the jury, it is now 6:20 and it has been about an hour and a half since I gave you my last supplemental charge. The main reason I called you in at this time is to ascertain whether you would rather go to dinner and try to finish the case tonight, if you can, or whether you would like to be excused to come back tomorrow morning. I would not feel justified to excuse you and declare a mistrial at this stage of the game. There is a terrific expense to all parties, Government and defense, in a trial of this case, and if this jury does not agree, of course, in due time another jury would have to be called and we go on through that procedure, and there is no reason to believe that with an intelligent jury, such as you are, that you would not and should not be able to get together. Of course, it is possible that you might agree on one count [fol. 1428] two counts and disagree on one count or two counts, as the case may be. I do not know what is going through your mind, as I have never taken that course of mental telepathy that would enable me to read your mind, but the main thing I would like to know, if you are going to stay, of course, I know that you want to get in touch with the members of your family and you sacrificed so much through this case—all of us—but, I am used to it and I am paid for it on a regular salary and you are not, but I would like to know if your foreman or forewoman could tell me whether you prefer going to dinner; and if so, the Marshal will make arrangements to take you to dinner at a suitable place and endeavor, if possible, to find a place where you could have a room and continue your discussions

if you want to, or whether you would prefer recessing until tomorrow morning, because I am mindful that as the hours progress your mind becomes more befuddled and your tempers become a little sharper. After all, it is all in the game and there is only one duty for you to do, and that is to do justice to all sides.

Now, with that, what would you prefer doing, sir?

The Foreman: Your Honor, having been selected as foreman of the jury, I believe it is the consensus of opinion that we be excused for dinner and then resume our deliberations immediately thereafter.

The Court: All right. Mr. Marshal, how many tables do you have, if any?

The Marshal: I have mine. We have two, your Honor. The lady said they had a room for us if we wanted a private room on the second floor. They told me that at lunch.

The Court: I do not know what the meals are at the Warwick for dinner, but where would you like to go?

The Foreman: I would suggest the hotel, sir. There are private rooms over there that are available, and that is the most accessible.

The Court: All right. If that is the case, of course, we do not need any automobile and, Mr. Marshal, if you will advise the hotel and take the jury over there at this time. All others remain seated.

(The jury retired from the courtroom at 6:35 p.m.)

The Court: The Court will recess until about eight o'clock.

(The coupon, at 6:35 p.m., a recess was taken until the return of the jury from their deliberations.)

[fol. 142 a] EVENING SESSION

PROCEEDINGS OUT OF THE PRESENCE OF THE JURY

(The Court reconvened at 10:30 p.m.)

The Marshal: I understand they would like to have just a few more minutes before they come in.

The Court: I will be glad to give them a few more minutes.

(Recess.)

The Court: Mr. Marshal, it is now 11:17. The jury has three times requested a few additional minutes. Tell them that I will allow them five minutes more, and assuming that they have not reached any determination at that time, I feel that it is time to recess for the night and I would recess them until 10:30 tomorrow morning.

Is there any objection to the Marshal giving them that message? If there is any objection, I will call them back and tell them myself.

Mr. Koutoulakos: I do not have any.

Mr. Parsons: No objections, your Honor.

The Court: All right.

(The Marshal so informed the jury.)

The Marshal: They said that they would stay five more minutes, your Honor, and then come back in the court-[fol. 1430] room.

(Recess.)

(The Court reconvened at 11:26 p.m.)

(The jury returned to the jury box.)

The Court: Gentlemen, waive the jury poll at this time?

Mr. Koutoulakos: Yes, sir.

Mr. Parsons: Yes, sir.

The Court: Members of the jury, I take it that you have not agreed upon a verdict as yet; is that correct?

The Foreman: We have not, your Honor.

The Court: Members of the jury, this is a very important case and I am mindful of the fact that the hour is late and we get tired and sometimes cannot think clearly in a matter of this kind. This is a case in which I think twelve reasonable men and women can ultimately meet and agree, and I would be very hesitant to discharge you at this time despite the fact that I know that you have thus far made conscientious efforts to get together.

I will excuse you until 10:30 tomorrow morning. Please do not permit anyone to discuss the case with you and do not discuss the case with anyone else under any circumstances. I do not feel it is fair to lock you up, or anything like that. I think that you are good citizens and you realize the importance of keeping these matters to yourself. Should anyone try to approach you at any time by any suggestion or [fol. 1431] inference, or anything like that, please do not hesitate to call it to my attention. I would suggest to you that you not even—if you get any telephone call—that you not even answer the 'phone in the interim period. You may be excused until tomorrow morning at ten o'clock.

The Foreman: Your Honor, may I suggest that the Clerk check that evidence there? There are certain pieces of valuables. I would like to know that he has them.

The Clerk: Did you give them to me? If you gave them to me, I got them:

The Court: Well, we do not worry about the jury, whether or not they are going to put things in there.

The Clerk: Were the rings in there?

The Foreman: The rings is what I was referring to.

The Court: All right, Members of the jury, you are excused until 10:30 tomorrow morning.

(Thereupon, an adjournment was taken until the following morning, December 9, 1958, at 10:30 a.m.)

[fol. 1432]

Newport News, Virginia
December 9, 1958

Appearances: As previously noted.

(The Clerk polled the members of the jury.)

The Clerk: All here.

The Court: All present. Members of the jury, at this time I will ask you to renew your deliberations unless you have any specific question that you wish to ask of me. I can only say to you that as you already know the jury room is no place for questions of sympathy or prejudice. You have a duty to perform and one that is always a difficult duty with every jury in either a civil or a criminal case. All that anyone expects you to do is to do your duty. Should

you have any question at any time, if you will send word to me, I will be available and ready to respond.

You may retire at this time.

(The jury retired to the jury room to further deliberate on their verdict at 10:32 a.m.)

The Court: Gentlemen, I guess we have nothing to do at the present time. I did bring some work over so that I thought maybe I could get some extra work done.

(The Court recessed at 10:33 a.m.)

[fol. 1433] (The Court reconvened at 12:57 p.m.)

PROCEEDINGS OUT OF THE PRESENCE OF THE JURY

The Court: Mr. Koutoulakos, did you care to make some statement to the Court?

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. Koutoulakos: Yes, your Honor. I feel at this time a motion for a mistrial is in order in view of the—

The Court: What is the ground for the motion for the mistrial?

Mr. Koutoulakos: Well, the jury has been out to such an extent I do not feel they can come to a proper decision at this point.

The Court: Of course, as I said to the jury during one of the times I called them back here, if I were capable of mental telepathy and could tell what was going on in the minds of the individual jurors, I could perhaps answer your inquiry, but I call your attention to a very recent article—I think it was in this morning's paper—

Mr. Koutoulakos: Yes, sir, I am aware of it.

The Court: The Georgia bombing case where the jury has been locked up for two days now. This jury, Mr. Koutoulakos, has not at any time reported to me that they are hopelessly deadlocked.

Mr. Koutoulakos: Well, would your Honor ask them that?

[fol. 1434] The Court: No, it is not my duty to ask them that. I have invited them to ask me any questions they want

to and, for all I know, they may be very carefully reviewing the evidence and I have no way of telling, but I call this to your attention, and since your clients are in the room here, of course if there is a mistrial ultimately by reason of a hung jury, the case will have to be tried again. This is not the type case where the Department of Justice is ever going to drop the prosecution as such. There must be either a conviction or an acquittal and you and your associate, Mr. Varoutsos, and Mr. Davis, your Norfolk associate, may be in such a position that you are willing to undergo another eight day case. Maybe your financial arrangements have been so made that you can carry on indefinitely.

Mr. Koutoulakos: No, I do not think so.

The Court: But this Court is not going to be inclined to grant the privilege of court-appointed counsel if there is another trial without a very thorough investigation of how much money was expended in this trial. In other words, parties litigant to any litigation should not expend all of their funds on one trial bearing in mind that there might be some other trial. Now, if you and Mr. Varoutsos and Mr. Davis wish to state to the Court at the proper time that you are prepared to carry this through in another [fol. 1435] case irrespective of what your client may do by way of financial remuneration, that at least would assure me these two defendants would have counsel the next time they are tried.

Mr. Koutoulakos: Your Honor, I never turned my back on a man because of lack of funds and I do not plan to do it now. If these people need me at any time, I will be here, assuming, of course, that my schedule is such that it can be done.

The Court: The expense—I am not talking about the Government expense—

Mr. Koutoulakos: I realize that.

The Court: These defendants have gone to terrific expense. They have employed three lawyers; they have employed, which came out in the evidence, private investigators. I do not know what other expense they have been put to, but I know something about the expense of preparing a case for trial, and I do not mean to hazard a guess as to what has been expended by Mr. and Mrs. Milanovich—

Mr. Koutoulakos: I can assure the Court that they are just about on the rocks. There is no question about that.

The Court: It has been a substantial expenditure.

Mr. Koutoulakos: That is right.

The Court: And the nature of the case is such that I know—Mr. Parsons is going out after January 1st, why, [fol. 1436] he is finished, so he is not concerned—but the Department of Justice would never drop the case.

Mr. Koutoulakos: I was not thinking about that, your Honor.

The Court: Maybe after three hung juries, maybe.

Mr. Koutoulakos: I was not concerned with that. I would have to agree with your Honor's observation. My main consideration was this, can the jury at this point reach a verdict without being a verdict of compromise? And aren't these defendants entitled to have the unprejudiced verdict, let me put it that way, of every individual member of that jury?

The Court: The only thing I can tell you, I do not know of any act that permits me to go up in the jury room and sit with them so that I can even answer you.

Mr. Koutoulakos: But that is my concern, your Honor.

The Court: There may be substantial agreement. If you will remember last night, I think it was three times I sent the Marshal up to bring the jury back and each time word came back. It may have been only twice. I do not know. The record will speak for itself. It was so late last night and I was so tired—

Mr. Koutoulakos: I think your Honor is right. It was two or three times.

[fol. 1437] The Court: I do not remember, but each time the Marshal came back and said they were making substantial progress and they wanted to stay up there again.

Mr. Koutoulakos: And talking about financial, I can assure the Court that as of now this case is costing me money, so it is not a question of my looking to them.

The Court: There is no doubt about it, Mr. Koutoulakos. When someone has to stay here waiting on a jury verdict there is no profit.

All right, have a seat, if you please.

The Marshal: Your Honor, the foreman of the jury wants to know whether the verdict should be written on the piece of paper that he has.

The Court: On the cover of the indictment, on the back part, on the cover of the indictment.

I will not call the jury for lunch at the present time. I am afraid, though, it might be still a disagreement. We never know.

(The jury returned to the jury box at 1:09 p.m.)

The Court: Gentlemen, do you desire the jury polled at this stage?

Mr. Koutoulakos: Not at this time, your Honor.

The Court: All present, all twelve are present.

[fol. 1438] All right, Mr. Clerk.

The Clerk: Ladies and Gentlemen of the jury, have you agreed upon a verdict?

The Foreman: We have, Mr. Clerk.

(The verdict was handed to the Court.)

VERDICT

The Court: Mr. Foreman, I thoroughly understand the verdict as returned. However, I would like to make this suggestion that you add at the top words substantially as follows, "We, the jury, find as follows," with respect to the several counts in the indictment, and if you will add that just above this and date it.

The Foreman: We, the jury—

The Court: We, the jury, with respect to the several counts in the indictment find as follows.

The Foreman: And date it?

The Court: And date it in the lower left-hand corner.

The Foreman: May I be excused to the jury room?

The Court: I suspect you all better file back there and take care of that.

(The jury retired to the jury room at 1:11 p.m.)

[fol. 1439] PROCEEDINGS OUT OF THE PRESENCE
OF THE JURY

The Court: May I say for the benefit of counsel that the jury has returned specific verdicts as to each defendant and as to each count and, therefore, they just named the defendant and then put first count, second count, third count and fourth count, as the case may be with their verdict, and I have told them to go back to merely add, "We, the jury, find with respect to the several counts against the defendants as follows," and then put the date on it. That was the only thing lacking. I do not feel at liberty to divulge what the verdict was.

Mr. Parsons: No objection by the Government, your Honor.

Mr. Koutoulakos: I do not think there is any objection.

(The jury returned to the jury box at 1:15 p.m.)

The Court: You may have seats, Members of the jury.

The Clerk: Lady and Gentlemen of the jury, have you reached a verdict?

The Foreman: We have, Mr. Clerk.

(The verdict of the jury was handed to the Clerk.)

[fol. 1440] The Clerk: "We, the jury, find with respect to the several counts as follows: Mike Milanovich, first count not guilty, second count guilty, third count not guilty. Virginia Milanovich, first count not guilty, second count guilty, third count not guilty, fourth count guilty," signed Walter T. Rilee, Foreman, dated December 9, 1958.

That is your verdict, Members of the jury, and so say you all!

(The jurors answered in the affirmative.)

The Court: Is there a request that the individual jurors be polled with respect to their verdicts?

Mr. Koutoulakos: Yes, please, your Honor.

The Court: Members of the jury, the Clerk will now again read you the verdict as recorded. If this is your verdict, you will answer when your name is called, yes. If it is not your verdict, you will answer, no.

(Thereupon, the Clerk read the verdict of the jury and all jurors answered in the affirmative.)

The Court: All twelve jurors have apparently answered in the affirmative.

[fol. 1443]

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Koutoulakos: Now, your Honor, at this time I would like to make some motions and I would like some time to arrange them. I talked to Mr. Davis. I would like to request that these folks be continued on bond for a few days. I feel they are a good risk, legitimate risk, pending at least the discussion with them as to the possibility of appeal and filing these motions.

The Court: Of course, they have a right to stay out [fol. 1444] on bond pending appeal providing that the Court is satisfied that the bond is sufficient.

Mr. Koutoulakos: Now, your Honor, I think—

The Court: I think with respect to your motions—I do not know what the motions are—I assume it is to set aside the verdict—

Mr. Koutoulakos: Yes, sir, against the law and the evidence.

The Court: —being contrary to the law and the evidence and for errors with respect to the admission of evidence—

Mr. Koutoulakos: Yes, sir.

The Court: —and perhaps of failure to admit evidence, although I do not remember what I failed to admit as far as the defense is concerned, and for such errors in the charge, if any.

Mr. Koutoulakos: Yes.

The Court: But I will be glad to let you prepare the motion in detail, if you want to. The Court is completely satisfied that both of these defendants have had an eminently fair trial and that it is purely a question of fact for determination by the jury and this jury, by its verdict, has clearly shown that they gave little credence to the testimony of Grimmer and Guerrieri. I would say that the corroborating evidence, the fishing expedition and various [fol. 1445] other items of identification of the Milanovich

automobile by the various guards is what turned the key, plus the conflicting statements that these individuals gave to the agents of the Federal Bureau of Investigation. I think that if you can dictate your motion to the court reporter, the Court will be prepared to rule on it.

Mr. Koutoulakos: Your Honor, at this time I am just not prepared to fully dictate a motion in the—

The Court: Can you think of any other motions other than what I have mentioned there, that is, a motion to set aside the verdict as being contrary to the law and the evidence, a motion to set aside the verdict and grant a new trial for the reason that there have been errors in the admission of evidence and errors, if any, in the exclusion of any sort to be introduced by the defendants, although I am frank to say I do not remember any, a motion to set aside the verdict for the reason that the Court refused to require the United States Attorney to elect as to whether he had to proceed on the larceny counts or the receiving and concealing counts and a motion to set aside the verdict and grant a new trial for any errors with respect to the charge that was given by the Court? And I will be glad to incorporate anything else you want in there.

Mr. Koutoulakos: I realize that, your Honor, but at this time—of course, you realize we had a trying time. I think [fol. 1446] you substantially covered it, to be honest with the Court, but I do not want to pin myself down at this point. I want to think about it.

The Court: Suppose I incorporate my comments into the record as your motion—

Mr. Koutoulakos: Yes.

The Court: —with your right to—

Mr. Koutoulakos: File additional grounds.

The Court: —within two days to file additional grounds, and the Court will overrule the motion as thus far filed or made, but you may reincorporate those grounds in any written motion that you wish to file.

Mr. Koutoulakos: Your Honor, I would like to have some time for purposes of noting an appeal and—

The Court: You do not need to note an appeal until I sentence them.

Mr. Koutoulakos: I realize that. Now, the next question I had in mind—I talked to Mr. Davis with respect to

these people getting home and in a situation such as this, of course, I think you realize the practical problems that arise, and permit them to remain on bond. I am satisfied that they are both good risks and they are not in any way conducive to violence.

The Court: I am a little bit concerned about the situation, particularly with respect to the defendant Virginia [fol. 1447] Milanovich.

Mr. Koutoulakos: Everybody is out of town, your Honor.

The Court: However, I am going to continue them on their present bond at this time. I think the sensible thing to do is to fix a date for sentencing.

Mr. Koutoulakos: Yes, sir.

The Court: Mr. Toler, the Probation Officer, has just handed me a report with respect to the defendant Mike Milanovich, which is complete.

Mr. Koutoulakos: Yes, sir, I understand that.

The Court: And which is a favorable report from the standpoint of his personal life history. Of course, he mentions the seriousness of the offenses and the known association of Mr. Milanovich with others who had criminal proclivities, at least. As to the defendant Virginia Milanovich, Mr. Toler has advised me that on yesterday that she did request interviewing with respect to the preparation of a probation report. There were three letters sent to her and she did not come in in response to that interview, but I can understand that and that should not be held against her. Frequently people do not realize that there is no contact other than good morning and goodbye between the Probation Officer and the Court until there has been a conviction—and while it has never been known that a [fol. 1448] newspaper reporter could get any information out of a probation officer along those lines, I do not think any reporter would even ask a probation officer—yet, I can understand the feeling of Mrs. Milanovich that she would not want to divulge any information and certainly the fact that she has not been interviewed by the probation officer prior to this time will not be held against her in any respects. The probation officer has exhibited to me the record from the Police Department of the City of Norfolk which she has attained herself and it contains a series

of misdemeanors which are varying activities, and I believe there is one conviction—

Mr. Koutoulakos: I do not think she has anything other than a misdemeanor, your Honor.

The Court: She has a whiskey charge, although I do not know whether that was a misdemeanor or a felony. However, I want her to have the benefit of presenting any evidence that she might desire. After all, I can see, from her record, that the nature of her general reputation, what it has been in the past, that thus far—this goes back to 1926, and it goes through about 1951—but certainly she is entitled to present any evidence from any of her friends and neighbors who would speak a good word in her behalf. I do not see any need of any further evidence other than what was introduced in the court with respect to the defendant Mike Milanovich.

Mr. Koutoulakos: Yes, your Honor. I am sure you are satisfied that he was a man of excellent character.

The Court: He apparently had established himself as a man of good character. I am not going to use the word "excellent", but I certainly use the word "good character" and his determination of his case rests in the seriousness of the nature of the offense, and I have strong doubts that I can consider probation for either, but I want to hear the argument of counsel.

Mr. Koutoulakos: Yes, sir.

The Court: Mr. Toler, how long will it take you to prepare a report with respect to Mrs. Milanovich?

Mr. Toler: Sir, if I see Mrs. Milanovich tomorrow, I think, unless there is a lot of out-of-state investigation, I can have it within a week.

The Court: All right. I do not have my docket with me at the present time, but I think I will set the matter, subject to your arrangements, Mr. Koutoulakos—this presents a question that you would have to come down, I suppose, from Arlington—

Mr. Koutoulakos: Yes, sir.

The Court: —unless you want Mr. Davis to handle it.

Mr. Koutoulakos: Well, I will confer with Mr. Davis so [fol. 1450] we can get together on it. I will call him as soon as we get through here.

Mr. Parsons: If it is not too inconvenient to Mr. Toler, I would suggest next Monday. Of course, that is subject to him.

Mr. Koutoulakos: I have a negligence case set for the 15th which will take a couple of days. It will be in the Alexandria Corporation Court.

The Court: Well; how about Thursday, the 18th?

Mr. Koutoulakos: Thursday, the 18th; is that correct?

Mr. Parsons: That is correct.

Mr. Koutoulakos: The 18th?

The Clerk: Thursday is the 18th.

Mr. Parsons: Would that be here or in Norfolk, your Honor?

The Court: That will be in Norfolk.

Mr. Parsons: In Norfolk?

Mr. Koutoulakos: In Norfolk.

The Court: And I will hear it at 9:00 a.m.

Mr. Koutoulakos: All right, sir.

The Court: Or if it is more convenient for you, Mr. Koutoulakos, I will hear it at 1:00 p.m., whichever suits you. I do not have my docket.

Mr. Koutoulakos: I will be here, if at all possible, late [fol. 1451] the evening before, so I will be available, your Honor, at nine, unless—

The Court: At nine o'clock in the morning.

All right, the defendants will be continued on bond in the interim period.

Mr. Koutoulakos: Thank you, your Honor.

(Thereupon, at 1:45 p.m. the Court adjourned.)

[fol. 1452]

Norfolk, Virginia
December 30, 1958

Appearances: As previously noted.

The Court: Criminal Action 11-696, United States of America versus Mike Milanovich and Virginia Milanovich; Mr. Parsons, the United States is ready?

Mr. Parsons: Yes, sir, we are ready.

The Clerk: And Mr. Davis, the defendant is ready?

Mr. Koutoulakos: I want to wish the Court and its members a Merry Christmas.

The Court: Thank you, gentlemen. The defendants have filed motions for acquittal notwithstanding the verdict or, in the alternative, a motion for a new trial. Mr. Koutoulakos and Mr. Varoutsos and Mr. Davis, would you like to argue the matter? I have glanced through the motion as filed. I think the motion is the same in each instance for each defendant. I may be incorrect in that.

Mr. Koutoulakos: Yes, your Honor.

(Thereupon, counsel argued the motion for a new trial and the Court denied the respective motions, to which action of the Court the defendants took exception.)

[fol. 1453] The Court: Let them come forward.

The Marshal: Defendants step forward, please.

SENTENCES

The Court: Mike Milanovich, have you anything to say as to why the Court should not now impose sentence upon you?

The Defendant Mike Milanovich: Yes, sir, because I am not guilty.

The Court: Do you have anything further to say?

Mr. Koutoulakos: Your Honor, he does not have anything else to say. Does your Honor want to hear anything by counsel on his behalf?

The Court: I have read the Probation Officer's report, gentlemen. The Probation Officer's report, gentlemen, of course, is clear. My view of it, however, is that Mr. Milanovich has had a fair trial, but he has taken the witness stand in his own behalf and he has, by his own admission, associated with people that he knew were hardened criminals as such and who were admittedly participants in this. They came to his house and they were welcomed by him, and the Court is completely convinced that both Mr. and Mrs. Milanovich were definitely involved in this matter.

On the second count of the indictment, it is the judgment of the Court that the defendant Mike Milanovich be committed to the custody of the Attorney General, to be by him or his duly authorized representative confined in [fol. 1454] such institution as he may direct for a term of five years unless sooner released by operation of law.

Virginia Milanovich, have you anything to say as to why the Court should not now pronounce sentence upon you?

The Defendant Virginia Milanovich: Nothing.

The Court: You, of course, have lived, by your own admission and by the record, a life of crime.

On the second count of the indictment, it is the judgment of the Court that the defendant Virginia Milanovich be committed to the custody of the Attorney General, to be by him or his duly authorized representative confined in such institution as he may direct for a term of ten years unless sooner released by operation of law.

On the fourth count of the indictment, it is the judgment of the Court that the defendant Virginia Milanovich be committed to the custody of the Attorney General, to be by him or his duly authorized representative confined in such institution as he may direct for a term of five years unless sooner released by operation of law.

The sentence on the fourth count of the indictment shall run concurrently with the sentence imposed on the second count of the indictment.

Bail pending appeal, if any, as to Mike Milanovich will be \$5,000.00. Bail pending appeal as to Virginia Milano- [fol. 1455] vich will be \$15,000.00.

[fol. 1456]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 7825.

MIKE MILANOVICH and VIRGINIA MILANOVICH, Appellants,
versus
UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court for the
Eastern District of Virginia, at Norfolk.

Walter E. Hoffman, District Judge.

(Argued November 2, 1959.)

OPINION—March 8, 1960

Before Sobeloff, Chief Judge, and Soper and Haynsworth,
Circuit Judges.

Louis Koutoulakos (J. Hubbard Davis and Paul G. Varoutsos on brief) for Appellants, and

Henry St. J. FitzGerald, Assistant United States Attorney
(Joseph S. Bambacus, United States Attorney, on brief),
for Appellee.

[fol. 1457] Per Curiam:

Mike Milanovich was convicted in the District Court for the Eastern District of Virginia on a count charging him with larceny of \$14,788.78 on June 2, 1958, from the United States Naval Amphibious Base at Little Creek, Virginia. His wife, Virginia Milanovich, was convicted on the same count of larceny, and also on a count charging her with receiving stolen goods (i.e., the same \$14,788.78) on June

2, 1958.¹ The convictions were under 18 U.S.C.A. § 641, the first paragraph of which makes it an offense to steal property belonging to the United States, while the second paragraph makes it an offense to receive such stolen property. Both husband and wife have appealed.

The evidence against the Milanovichs consisted chiefly of the testimony of three accomplices. It was revealed that they and their three accomplices had previously planned the robbery, that all five drove at night in Mike Milanovich's automobile to the Amphibious Base, and that the three accomplices actually broke into the commissary store on the base where they opened the safe, while the Milanovichs waited in their automobile outside the store. Because the theft took longer than had been anticipated, the Milanovichs left the base and did not wait, as had been planned, for their confederates to finish. After leaving the commissary store, the three hid the stolen money in a nearby woods on the base, and then proceeded to a prearranged meeting place where Virginia Milanovich picked them up. It is not clear from the evidence exact when, or by whom, the money [fol. 1458] was actually retrieved, but there was testimony that more than two weeks after the theft, Virginia Milanovich assisted in the counting of it. It was also disclosed that on June 19, 1958, a suitcase was found at the Milanovich home containing \$500.00, allegedly part of the loot.

On the larceny count, Mike Milanovich was sentenced to five years imprisonment, while Virginia was sentenced to ten years. The court imposed on Virginia an additional sentence of five years for receiving the stolen goods, to run concurrently with her ten year sentence for the larceny.

Six assignments of error are discussed in the appellants' brief, but, in our view, only the first has any merit.

¹ Both were also charged with larceny and receiving stolen goods from a Naval Air Station at Norfolk on May 17, 1958, but the jury acquitted, and we are not here concerned with these counts.

1. *Convictions for Larceny and Receiving the Same Property*

The contention is made that, in the light of her conviction upon the larceny count, Virginia Milanovich could not properly be convicted of receiving the stolen money. This claim of error is applicable only to Virginia Milanovich as she alone was convicted of both offenses.

Both at common law and under the federal statutes, the settled rule is that a person cannot be convicted for stealing goods and receiving them also. *People v. Barnhill*, 333 Ill. 160, 164 N.E. 154; *People v. Daghita*, 301 N. Y. 223, 93 N.E. 2d 649; *State v. Hamilton*, 172 S.C. 453, 174 S.E. 396; Anno. 136 A.L.R. 1087; 2 *Wharton's Criminal Law and Procedure* (1957 ed.) § 576; 45 *Am. Jur.*, *Receiving Stolen Property*, § 2. However, there is a recognized exception that an accessory before the fact, not participating in the actual theft, who in federal law and in many states is [fol. 1459] regarded as a principal, may, nevertheless, be convicted of both larceny and receiving the stolen goods. Both the rule and exception to it have been applied in appropriate cases to federal statutory crimes, *Aaronson v. United States*, 4 Cir., 175 F. 2d 41.

In *Aaronson*, where convictions for both offenses were affirmed, the defendant had agreed with two other persons that if they would steal for him certain goods from a Government warehouse, he would pay them \$2,500.00. On the day of the theft, the defendant did not accompany the two thieves to the warehouse, but he met them after the theft at a considerable distance from the Government warehouse. It has been argued to us that Virginia Milanovich was much more an actual participant in the theft than was the defendant in *Aaronson*, and thus the general rule prohibiting convictions for both larceny and receiving the same goods applies, rather than the limiting exception.² We do

² The authorities appear to be in conflict where one is present at the scene of the crime, aiding in the commission of the larceny, but not taking part in the actual caption of the property; some cases hold that such person may be convicted of both larceny and receiving, while others hold that this may not be done. See Anno. 136 A.L.R. 1087, pp. 1101-1103.

not reach this question, as we think that the Supreme Court, in *Heflin*, United States, 358 U.S. 415, decided after the trial of this case, has indicated the general view that in the absence of a contrary indication by Congress, a defendant charged with offenses under statutes of this character may not be convicted and punished for stealing and also for receiving the same goods.

In *Heflin*, which was a prosecution under the bank robbery statute [18 U.S.C.A. § 2113] it was held that Congress did not intend to subject to double punishment a person [fol. 1460] who robbed a bank and received the fruits of the robbery. The Court said, at page 419:

" * * * it seems clear that subsection (c) was not designed to increase the punishment for him who robs a bank but only to provide punishment for those who receive the loot from the robber. We find no purpose of Congress to pyramid penalties for lesser offenses following the robbery. * * * "

The Court did not discuss the common law distinction between an accessory before the fact and a person actually partaking in the theft, but the language of the opinion precludes such a distinction. The decision was based, not upon any constitutional ground, but upon the view that Congress, by making it an offense to receive the stolen money, intended to reach an entirely distinct group of persons; and not to proliferate the punishment of those who commit robbery in violation of the statute. In saying " * * * we think Congress was trying to reach a new group of wrongdoers, not to multiply the offense of the bank robbers themselves," the Supreme Court would seem to refute any suggestion of a congressional purpose to draw a technical line whereby, while the thief may not be prosecuted as a receiver, his accessory may be answerable for both offenses.

The Government, however, argues that the *Heflin* decision is not applicable here because it involved the bank robbery statute [18 U.S.C.A. § 2113] with its particular legislative history, while the case before us involves another statute, that dealing with the theft of Government property [18 U.S.C.A. § 641]. We perceive no differences between

the two statutes or their legislative histories justifying divergent interpretations in respect to the issue before us. [fol. 1461] In each statute, the first part makes the theft itself a crime, while a subsequently added paragraph deals with receivers of the stolen property. In Heflin, the Supreme Court, after observing that the legislative history of § 2113(c) was meager, pointed out that subsection (c), dealing with receiving, came into the law later than the subsection pertaining to the actual robbing of a bank. The same, however, is true of § 641, under which Virginia Milanovich was prosecuted. The first paragraph, making it an offense to steal Government property, has its origin in the act of March 2, 1863, ch. 67, 12 Stat. 696, 698; the second paragraph, pertaining to receivers, is derived from the act of March 3, 1875, ch. 144, § 2, 18 Stat. 479. The Government has failed to point out anything in the legislative history of the two sections requiring different constructions. Moreover, we find no reason to think that it was the congressional purpose to punish for stealing Government property and also for receiving the same, although it is now settled that one may not be convicted for robbing a bank and also for receiving the fruits of the crime.

Virginia Milanovich received concurrent sentences, ten years upon the conviction for larceny and five years upon the conviction for receiving the stolen money. Though we think the sentence for receiving should be stricken, we appropriately affirm the judgment of commitment which is fully supported by the conviction on the larceny count.

The application of the rule, that one who procures, aids or supports a larceny to such an extent that he is properly convicted as a principal may not also be punished for receiving the loot creates no inconsistency in the verdict. It does not obscure the jury's finding. Though we now hold, following Heflin, that the statute which makes receipt [fol. 1462] of the money a Federal crime was intended to reach a class of persons other than those guilty of the larceny, it is only because this defendant stands properly convicted of the larceny that the rule comes into play. Under these circumstances, avoidance of proliferation of the offense of larceny requires the vacation of the sentence for

receiving the money; it does not infect the conviction on the larceny count.

Clearly, the jury found that Virginia Milanovich aided and participated in the larceny to such an extent as to warrant her conviction of larceny. The verdict of guilty on the larceny count is abundantly supported by the evidence.

It is suggested that, if properly instructed, the jury might have found her guilty of receiving rather than of larceny. If we accept the facts as found by the jury, as we must, the jury had no such alternative. Only if the jury found that she was innocent of the larceny and that possession of the money was not hers, actually or constructively, from the time of taking, could it have properly found her guilty on the receiving count. Since, plainly, the jury did find that she was a participant in the larceny, its only alternative, under the rule of law we now declare, was to convict her of larceny and acquit her on the receiving count.

In light of the Supreme Court's decision in *Heflin*, we think the appropriate instruction to the jury should have been to acquit on the receiving count if it should find her guilty on the larceny count. Since the jury's findings are plain, this conditional direction of an acquittal on the receiving count can be done as well after the verdict as before. This is what the Supreme Court did in *Heflin*:

[fol. 1463] The case is within the rule of affirmance of the judgment of commitment if supported by a proper conviction upon one count notwithstanding the fact that a concurrent sentence was improperly imposed upon another count. *Heflin v. United States*, 358 U.S. 415; *Hirabayshi v. United States*, 320 U.S. 81; *Abrams v. United States*, 250 U.S. 616; *Classen v. United States*, 142 U.S. 140; *Harms v. United States*, 4 Cir., 272 F.2d 478.

The sentence on the receiving count will be vacated, but that does not require a reversal of the judgment.

2. Other Assignments of Error

Five other assignments of error are made on behalf of both appellants, but, in our view, none of them warrants extensive discussion. At the beginning of the trial, the

court granted the defendants' motion to exclude the witnesses. However, the trial judge refused the defendants' further request that the witness be instructed not to discuss their testimony. The exclusion of witnesses from the courtroom is discretionary, and it has been further held, in an opinion of Judge Learned Hand, *United States v. Chiarella*, 184 F. 2d 903, 907, that: "*A fortiori* an instruction to them not to discuss the evidence while out of the courtroom is also discretionary." It does not appear here that the witnesses did communicate concerning their testimony, and no prejudice to the defendants and no abuse of discretion is shown. We wish to indicate our view, however, that ordinarily, when a judge exercises his discretion to exclude witnesses from the courtroom, it would seem proper for him to take the further step of making the exclusion effective to accomplish the desired result of preventing the witnesses from comparing the testimony they [fol. 1464] are about to give. If witnesses are excluded but not cautioned against communicating during the trial, the benefit of the exclusion may be largely destroyed.

The next asserted error is that the court improperly limited cross-examination of one of the Government's witnesses. The limits imposed were not improper because the point sought to be developed had already been inquired into at great length. The defense attorney persisted in cross-examining about the witness' possession of a key to a certain apartment. The court made it clear that the cross-examiner was free to interrogate fully as to the relationship between the witness and the girl he had been visiting, and the restriction was merely against an indirect attack on the reputation of a person not then on the stand.

It is claimed that the court erred in its refusal to instruct the jury that where the Government relies on circumstantial evidence, such evidence must exclude every reasonable hypothesis except guilt. This instruction was requested in amplification of the judge's charge. While there are precedents in lower courts for such an instruction, the Supreme Court has deprecated it. Circumstantial evidence has been said by the Court to be intrinsically like direct evidence; both kinds involve danger of error and always

the jury must weigh the evidence and the inferences to be drawn. Where the jury has been adequately instructed on the required standards of proof and the law of reasonable doubt, an additional instruction of the type requested on circumstantial evidence is unnecessary, and has been called "confusing and incorrect," *Holland v. United States*, 348 U.S. 121, 139.

The appellants claim to have been prejudiced by the trial judge's rebuking a Government witness. The witness did [fol. 1465] not, when first asked a question by the prosecutor, answer correctly, and then after the correct answer was elicited, the court merely admonished her to tell the truth. The court's action was entirely proper, and it is difficult to see how it could have been prejudicial to the defendants.

The last alleged error relates to the trial judge's urging the jury to try to come to an agreement. After the jury had deliberated many hours, the trial judge gave them supplemental instructions on the importance of attempting to reach a verdict. We find in these instructions no undue pressure on any of the jurors to change their views.

Affirmed.

SOBELOFF, Chief Judge, concurring in part and dissenting in part:

I fully concur in the opinion and judgment of the court that there was no error in the trial of Mike Milanovich and that his conviction should be affirmed. Also I agree with the court in its frank recognition that as to Virginia Milanovich the District Court erred in failing to instruct the jury, as requested, that they could not convict her of both larceny and receiving the goods stolen. However I do not agree that the error can be deemed nonprejudicial and therefore does not require reversal of the judgment as to her.

It is difficult to convince oneself that Virginia Milanovich was not harmed by the admitted error. It is notable that, although her husband, who was convicted of larceny only, was sentenced to a five year term, her sentence for the [fol. 1466] larceny was ten years. Who can say that if she

had been convicted on the larceny count only, the sentence would still have been ten years? Does not the situation strongly suggest that the five year sentence for receiving was made concurrent with the ten year sentence for larceny precisely because the latter already reflected the punishment for the receiving? True, this cannot be demonstrated one way or the other, but the uncertainty must in fairness be resolved in favor of the defendant.

However, even if it could be assumed that Virginia Milanovich's ten year sentence for larceny did not reflect punishment for receiving, I think that she is entitled to a new trial for a more fundamental reason. The majority takes the position that the jury had no alternative but to convict her of larceny and not of receiving. The opinion goes on to say that the appropriate instruction to the jury "should have been to acquit on the receiving count if it found her guilty on the larceny count." I think the proper instruction would have been that the jury could convict of either larceny or receiving but not both. The judge should not, I submit, indicate to the jury that the larceny and not the receiving is the principal offense.

The result reached by the majority is made possible only by assuming that larceny was the primary offense of which Virginia was guilty, and that the receiving count is of a secondary character coming into play only after the defendant has been acquitted of the larceny. This is contrary to the traditional idea concerning larceny and receiving, that they are separate, distinct, and inconsistent offenses. The two crimes contemplate separate individuals performing entirely different roles. *Kirby v. United States*, 174 U. S. 47 (1899); *Heflin v. United States*, 358 U. S. 415 [fol. 1467] (1959); *Springer v. State*, 102 Ga. 447, 30 S. E. 971 (1897); *People v. Barnhill*, 333 Ill. 150, 164 N. E. 154 (1928); *State v. Tindall*, 213 S. C. 484, 50 S. E. 2d 188 (1948); 2 Wharton's Criminal Law and Procedure (1957 ed.) section 566; 45 Am. Jur., Receiving Stolen Property, section 2. The general rule, where one cannot be convicted of both stealing and receiving the same goods, is that the prosecution need not elect between counts but such election is for the jury, upon proper instructions. 45 Am.

Jur., Receiving Stolen Property, section 13 and section 20. By the affirmance of the conviction, the jury is deprived of its function to make the choice, and instead an appellate court makes it.

If Virginia Milanovich had been a principal in the first degree, i.e., one of the actual thieves, with the evidence overwhelmingly establishing larceny *rather* than receiving, then perhaps the reasoning of the majority would be more plausible, though still questionable. See *People v. Daghita*, 301 N. Y. 223, 93 N. E. 2d 649 (1950). In the present case, however, although only one overall transaction was involved (thereby precluding a conviction for both offenses), there was different evidence establishing each offense. While the receiving by the actual thieves took place immediately upon the theft, we do not know from the record when Virginia received the goods. There was separate and distinct evidence connecting her with receiving. She was seen two weeks later counting the money and a suitcase with the money was found in her home. The evidence implicating her in the larceny, i.e., assisting in the planning of the theft and going to the scene of the crime, consisted entirely of the testimony of admitted thieves, while the testimony showing receiving was corroborated by the additional physical proof, produced by reputable witnesses, of [fol. 1468] the suitcase of money found in her home. The jury, which admittedly deemed the evidence sufficient to establish both offenses, might well have thought the evidence of receiving was the more credible; if told that they could convict of one charge only, they might well have preferred the receiving count. For the receiving Virginia Milanovich was given only five years. The choice should have been left to the jury, and since they might reasonably have convicted of receiving instead of larceny, and since a lesser sentence was imposed for receiving, this court should not allow the greater sentence to stand. See *State v. Sweat*, 70 S. E. 234 (S. C., 1952), where in a factual situation similar to the present one, the Supreme Court of South Carolina held that the conviction of the defendant for receiving rather than larceny was justified. It cannot be assumed that if she had been convicted of the receiving rather

than the larceny, the court would then have imposed a ten year sentence instead of five:

It is suggested that the case falls within the rule, exemplified in a long line of federal decisions, that where the judgment is on an indictment containing multiple counts, if any one of them, standing alone, is good and will support the judgment, it will be affirmed. These cases all involved attacks upon one or more counts of an indictment on the ground that the counts did not state facts sufficient to constitute an offense (e.g., *Classen v. United States*, 142 U. S. 140), or that the counts charged an offense which was not constitutionally permissible (e.g., *Hirabayshi v. United States*, 250 U. S. 81), or that the evidence was insufficient to convict under one or more of the counts (e.g., *Abrams v. United States*, 250 U. S. 616). In such cases, if one count was found unobjectionable on the above grounds, and the sentence did not exceed what could lawfully have been [fol. 1469] imposed upon that count, the conviction was affirmed. The present case poses a quite different problem. The defendant's attack is not directed at one or more independent counts of an indictment but at the jury's failure, because of erroneous instructions, to elect between the two counts.

It bears repeating that the validity or sufficiency of none of the counts is assailed. Rather the complaint is that if the jury had been correctly instructed, the jury might have elected to acquit of larceny and convict of receiving, for which the sentence imposed was only five years. The rule of the above cases is applicable when there is one good count *unaffected* by the others, the bad counts. Here, however, the larceny count is not a "good" count unaffected by the receiving. The two counts are not independent but interrelated. They do affect each other. Either standing alone would be good, but standing together, convictions upon both are inconsistent as a matter of law, when directed against the same person. Thus, because of the erroneous instructions, the larceny count will not support the ten year total sentence.

Nor does *Heflin v. United States*, 358 U. S. 415 (1959), afford any support for the judgment below. In *Heflin*, the defendant moved to vacate his sentence under 28 U.S.C.A.

section 2255, and while the reported opinions do not specify which sentence was being attacked, the inference is clear that the defendant was asking only that the receiving sentence be struck down. Here we have a direct appeal from the conviction, not an attempt to revise a sentence.

Moreover, the result reached by the majority appears to be directly contradictory to the decided cases involving the specific problem here, *i.e.*, the appropriate remedy [fol. 1470] where there is a concededly erroneous conviction for both stealing and receiving the same goods. Although there appear to be no federal cases exactly in point, the state cases have generally reversed such convictions. In *Commonwealth v. Haskins*, 128 Mass. 60 (1880), the leading case on this subject, the defendant was indicted for both larceny of a cow and receiving it knowing it to have been stolen. The jury found him guilty of both counts, but after the verdict, the trial judge, upon the state's motion, allowed a *nolle prosequi* to be entered as to the receiving count. This attempt of the prosecutor to retrieve the situation proved unavailing. In reversing the conviction, the Supreme Judicial Court of Massachusetts said:

"The record, therefore, notwithstanding the entry of the *nolle prosequi* shows that the defendants had been convicted by the jury upon both counts; and although, as a legal effect of a conviction upon each count it cannot be said strictly that it is an acquittal upon the other, yet the finding of guilty upon both is inconsistent in law, and is conclusive of a mistrial. It would have been quite proper, before the record and affirmation of the verdict, for the presiding judge to have called the attention of the jury to their misunderstanding of his previous instructions, and to have explained to them the mode by which it became their duty, if they convicted upon either of the counts, to acquit upon the other, and to have required of them to retire for further deliberation. . . . After the affirmation of the verdict, when there was no means of knowing of record upon which count the jury intended to convict, as there was no right in them to convict upon both, to assume that the error is corrected by a *nolle prosequi* of either

count by the district attorney, is to permit the district [fol. 1471] attorney to determine, instead of the jury, upon which count the defendants were guilty. But the *nolle prosequi* corrects no error, and has no effect upon the record as it stood prior to its entry. The record showed a verdict so inconsistent with itself, and so uncertain in law, that no judgment could be entered upon it."

This reasoning is cogent and convincing, not only as to the inability of the prosecutor to second guess the jury but also to delimit the prerogative of the appellate court.

In *Bargesser v. State*, 94 Fla. 404, 406, 116 So. 12 (1928), where the defendant was improperly convicted of larceny of an automobile and also receiving the same, the Supreme Court of Florida stated:

"Although a count charging each of these offenses against the same person and with respect to the same property may properly be included in one information, a verdict which in effect finds the defendant guilty both as a principal in the larceny and as a receiver of the same goods which he himself has stolen is inconsistent and no judgment can be rendered upon it, *although the evidence might sustain a conviction under either count.*" (Emphasis supplied.)

It is no answer in our case, therefore, to say, "the verdict of guilty on the larceny count is abundantly supported by the evidence." Returning to the Florida case, the court concluded at page 408:

"Since the defendant, under the evidence of this case, could not in law be guilty of both of these offenses, of which one did the jury find him guilty? The [fol. 1472] proof renders this uncertain. Under the circumstances the verdict does not aid the matter, nor can the verdict be construed under the usual rules, with reference to the pleadings and proof so as to clarify the situation. Since the verdict is one which the law does not authorize, the judgment entered thereon must be and is hereby reversed."

See also *Tobin v. People*, 104 Ill. 565 (1882); *State v. Hamilton*, 172 S. C. 453, 174 S. E. 396 (1934); 32 Am. Jur., Larceny, section 155; and cases cited in Anno., 136 A. L. R. 1087.

To summarize: Just as it is not for judges but for the jury, where a jury trial has been prayed, to find a verdict of guilty, however plain the case may appear to be, so judges may not assume to choose between alternatives available to the jury. Judges may not do so even for the laudable purpose of preventing the possibility of error on the jury's part. Likewise, if guilt is pronounced on two counts where under proper instructions conviction could be permitted on only one, neither the district judge, nor the appellate judges, may take it upon themselves to speculate which count the twelve jurors would have unanimously picked if they had been correctly instructed. Virginia Milanovich was entitled to have the choice made under proper instructions by the jury before whom she elected to be tried; without this, she may not be deprived of her liberty.

Since we cannot be certain what the jury would have decided if not erroneously charged, the doubt must be resolved in her favor. Either she should be given the benefit of the lesser sentence, or a new trial should be awarded.

[fol. 1473]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 7825

MIKE MILANOVICH and VIRGINIA MILANOVICH, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

JUDGMENT—March 8, 1960

Appeals From the United States District Court for the Eastern District of Virginia.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgments of the said District Court appealed from, in this cause, be, and the same are hereby, affirmed.

Morris A. Soper, United States Circuit Judge.

Clement F. Haynsworth, Jr., United States Circuit Judge.

I concur in part and dissent in part:

Simon E. Sobeloff, Chief Judge, Fourth Circuit.

Filed Mar 8- 1960, R. M. P. Williams, Jr., Clerk

[fol. 1474]

IN THE UNITED STATES COURT OF APPEALS

ORDER STAYING MANDATE—March 19, 1960

Upon the petition of the appellants, by their counsel,

It is ordered that the mandate of this Court in the above entitled case be, and the same is hereby, stayed pending application of the appellants in the Supreme Court of the United States for a writ of certiorari to this Court, provided the application is filed in the Supreme Court within the time provided by law.

March 19, 1960.

Clement F. Haynsworth, Jr., United States Circuit Judge.

[fol. 1475] Clerk's Certificate (omitted in printing).

[fol. 1476]

SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 7th, 1960.

Earl Warren, Chief Justice of the United States.
States.

Dated this 4th day of April, 1960.

[fol. 1477]

SUPREME COURT OF THE UNITED STATES

No. 910—October Term, 1959

MIKE MILANOVICH, et al., Petitioners,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed June 20, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

OFFICE SUPREME COURT, U.S.

FILED

MAY 6 1960

JAMES R. BROWNING, Clerk

In The

SUPREME COURT OF THE UNITED STATES

MAY TERM, 1960.

No.

910 79

**MIKE MILANOVICH
AND
VIRGINIA MILANOVICH,
*Petitioners***

vs

**UNITED STATES OF AMERICA
*Respondents***

**Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

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**In The
SUPREME COURT OF THE UNITED STATES**

MAY TERM, 1960

No.

**MIKE MILANOVICH
AND
VIRGINIA MILANOVICH,**
Petitioners

vs

UNITED STATES OF AMERICA
Respondents

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

BRIEF FOR THE PETITIONERS

*To The Honorables, The Chief Justice And Associate
Justices Of The Supreme Court Of The United States:*

Petitioners, Mike Milanovich and Virginia Milanovich, pray that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Fourth Circuit entered on the 8th day of April, 1960. Said opinion affirmed the judgment of the United States District Court for the Eastern District of Virginia, at Norfolk.

OPINION BELOW

The opinion of the Court of Appeals was affirmed, setting forth that the sentence on the receiving count will be vacated, but that does not require a reversal of the judgment.

JURISDICTION

The judgment of the Court of Appeals was entered on March 8, 1960. By order entered by this Court on April 4, 1960, the time of filing the petition for Writ of Certiorari was extended to May 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

- 1.) The Court erred in failing to instruct the jury that a conviction would not be for both larceny and receiving stolen goods. This question is applicable to Virginia Milonovich as she alone was convicted of both offenses.
- 2.) The Court erred in failing to instruct the witnesses not to discuss their testimony.

STATUTE INVOLVED

18 U.S.C. 641 provides:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any prop-

erty made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than \$10,000 or imprisoned not more than ten-years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

STATEMENT

Petitioners seek a review of the judgment of the Court of Appeals affirming the conviction of Mike Milanovich on a count charging him with larceny of \$14,788.78 on June 2, 1958, from the United States Naval Amphibious Base at Little Creek, Virginia. His wife, Virginia Milanovich, was convicted on the same count of larceny, and also on a count charging her with receiving stolen goods (i.e., the same \$14,788.78) on June 2, 1958.

The evidence against the Milanovichs consisted chiefly of the testimony of three accomplices. It was revealed that they and their three accomplices had previously planned the robbery, that all five drove at night in Mike Milanovich's automobile to the Amphibious Base, and that the three accomplices actually broke into the commissary store on the base where they opened the safe, while the Milanovichs waited in their automobile outside the store. Because the theft took longer than had been anticipated, the Milanovichs left the base and did not wait, as had been planned, for their

confederates to finish. After leaving the commissary store, the three hid the stolen money in a nearby woods on the base, and then proceeded to a prearranged meeting place where Virginia Milanovich picked them up. It is not clear from the evidence exactly when, or by whom, the money was actually retrieved, but there was testimony that more than two weeks after the theft, Virginia Milanovich assisted in the counting of it. It was also disclosed that on June 19, 1958, a suitcase was found at the Milanovich home containing \$500.00, allegedly part of the loot.

On the larceny count, Mike Milanovich was sentenced to five years imprisonment, while Virginia was sentenced to ten years. The court imposed on Virginia an additional sentence of five years for receiving stolen goods, to run concurrently with her ten year sentence for the larceny.

Throughout the lengthy trial the trial judge was asked to admonish the witnesses not to discuss their testimony, this the trial judge refused to do.

ARGUMENT

A. Convictions for Larceny and Receiving the Same Property

The crime of larceny and receiving are separate, distinct, and inconsistent offenses. The two crimes contemplate separate individuals performing entirely different roles; *Heflin vs United States*, 358 US 415 (1959); 2 Wharton's Criminal Law and Procedure (1957 ed) section 566.

It is a well established rule of law, that one who is guilty of larceny cannot also be guilty of receiving. The prosecu-

tion need not elect between counts, but such election is for the jury, upon proper instructions. By the affirmance of the conviction, the jury is deprived of its function to make the choice, and instead an appellate Court, in this case, has made the choice.

The choice should have been left to the jury, and since they might reasonably have convicted of receiving instead of larceny, and since a lesser sentence was imposed for receiving, this Court should not allow the greater sentence to stand.

It was held in Heflin (supra) that Congress did not intend to subject to double punishment a person who robbed a bank and received the profits of the robbery. The statute in question in this case is similar to the bank robbery statute and there appears to be no differences between the two statutes or their legislative histories justifying a different interpretation.

The jury, if allowed to consider the evidence presented under proper instructions could have found Virginia Milanovich guilty of receiving rather than of larceny. This then is a jury question and not one for the Court to determine.

B. Failure to instruct the Witnesses not to discuss their Testimony

The exclusion of the witnesses loses all of its value if they are not admonished not to discuss their testimony. This of course, is discretionary with the Court, but when it is brought to the Court's attention that the witnesses are

discussing their testimony with each other the request should be granted.

The manifest purpose of the rule being to secure trusts and promote the ends of justice and to have testimony of a witness uninfluenced with the testimony of other witnesses. (Roberts vs. State, 25 So. 238 240; 122 Ala. 47), and to prevent convert of action among witnesses (State vs. Pell, 119 N. W. 154, 140 Iowa 655).

In the case at bar, it was especially necessary to prevent at least the material witnesses from discussing their testimony. The defendants were contending through the entire trial that the charges against them were a frame-up, devised by the three alleged accomplices, Grimmer, Guerrieri, and Sofocleous, who had plead guilty and were the key government witnesses. That these witnesses had an opportunity to get together and collude is apparent by the record, and the affidavits that were filed in support of the motion for a new trial.

The failure of the Court to so instruct the witnesses deprived Mike and Virginia Milanovich of a fair and impartial trial.

CONCLUSION

WHEREFORE, petitioners respectfully pray that this petition be granted and that a Writ of Certiorari issue, directed to the United States Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Honorable Court for its review and determination the proceedings in the case Mike Milanovich and Virginia Milanovich, appellants vs United States of America, ap-

pellee, to the end that the judgment and opinion of said Court of Appeals may be reversed by this Honorable Court and a new trial granted the petitioners.

Petitioners further pray for such other and further relief in the premises as may seem proper and just.

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Office Supreme Court, U.S.

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MAY 13 1960

JAMES R. BROWNING, Clerk

**In The
SUPREME COURT OF THE UNITED STATES**

MAY TERM, 1960

No. **010-79**

**MIKE MILANOVICH
AND
VIRGINIA MILANOVICH,**
Petitioners

vs

UNITED STATES OF AMERICA
Respondents

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

APPENDIX FOR THE PETITIONERS

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7825.

Mike Milanovich and Virginia Milanovich,
Appellants,

versus

United States of America,
Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK.
WALTER E. HOFFMAN, DISTRICT JUDGE.

(Argued November 2, 1959. Decided March 8, 1960.)

Before SOBELOFF, Chief Judge, and SOPER and HAYNS-
WORTH, Circuit Judges.

Louis Koutoulakos (J. Hubbard Davis and Paul G.
Varoutsos on brief) for Appellants, and Henry St. J.
FitzGerald, Assistant United States Attorney, (Joseph
S. Bambacus, United States Attorney, on brief) for Ap-
pellee.

PER CURIAM:

Mike Milanovich was convicted in the District Court for the Eastern District of Virginia on a count charging him with larceny of \$14,788.78 on June 2, 1958, from the United States Naval Amphibious Base at Little Creek, Virginia. His wife, Virginia Milanovich, was convicted on the same count of larceny, and also on a count charging her with receiving stolen goods (i.e., the same \$14,788.78) on June 2, 1958.¹ The convictions were under 18 U.S.C.A. § 641,² the first paragraph of which makes it an offense to steal property belonging to the United States, while the second paragraph makes it an offense to receive such stolen property. Both husband and wife have appealed.

The evidence against the Milanovichs consisted chiefly of the testimony of three accomplices. It was revealed that they and their three accomplices had previously planned the robbery, that all five drove at night in Mike Milanovich's automobile to the Amphibious Base, and that the three accomplices actually broke into the commissary store on the base where they opened the safe, while the Milanovichs waited in their automobile outside the store. Because the theft took longer than had been anticipated, the Milanovichs left the base and did not wait, as had been planned, for their confederates to finish. After leaving the commissary store, the three hid the stolen money in a nearby woods on the base, and then proceeded to a prearranged meeting place where Virginia Milanovich picked them up. It is not clear from the evidence exactly when, or by whom, the money

¹ Both were also charged with larceny and receiving stolen goods from a Naval Air Station at Norfolk on May 17, 1958, but the jury acquitted, and we are not here concerned with these counts.

was actually retrieved, but there was testimony that more than two weeks after the theft, Virginia Milanovich assisted in the counting of it. It was also disclosed that on June 19, 1958, a suitcase was found at the Milanovich home containing \$500.00, allegedly part of the loot.

On the larceny count, Mike Milanovich was sentenced to five years imprisonment, while Virginia was sentenced to ten years. The court imposed on Virginia an additional sentence of five years for receiving the stolen goods, to run concurrently with her ten year sentence for the larceny.

Six assignments of error are discussed in the appellants' brief, but, in our view, only the first has any merit.

*1. Convictions for Larceny and Receiving
the Same Property*

The contention is made that, in the light of her conviction upon the larceny count, Virginia Milanovich could not properly be convicted of receiving the stolen money. This claim of error is applicable only to Virginia Milanovich as she alone was convicted of both offenses.

Both at common law and under the federal statutes, the settled rule is that a person cannot be convicted for stealing goods and receiving them also. *People v. Barnhill*, 333 Ill. 160, 164 N.E. 154; *People v. Daghita*, 301 N. Y. 223, 93 N.E. 2d 649; *State v. Hamilton*, 172 S.C. 453, 174 S.E. 396; *Anno*. 136 A.L.R. 1087; 2 *Wharton's Criminal Law and Procedure* (1957 ed.) § 576; 45 *Am. Jur.*, *Receiving Stolen Property*, § 2. However, there is a recognized exception that an accessory before the fact, not participating in the actual theft, who in federal law and in many states is

regarded as a principal, may, nevertheless, be convicted of both larceny and receiving the stolen goods. Both the rule and exception to it have been applied in appropriate cases to federal statutory crimes, *Aaronson v. United States*, 4 Cir., 175 F. 2d 41.

In *Aaronson*, where convictions for both offenses were affirmed, the defendant had agreed with two other persons that if they would steal for him certain goods from a Government warehouse, he would pay them \$2,500.00. On the day of the theft, the defendant did not accompany the two thieves to the warehouse, but he met them after the theft at a considerable distance from the Government warehouse. It has been argued to us that Virginia Milanovich was much more an actual participant in the theft than was the defendant in *Aaronson*, and thus the general rule prohibiting convictions for both larceny and receiving the same goods applies, rather than the limiting exception.² We do not reach this question, as we think that the Supreme Court, in *Heflin v. United States*, 358 U.S. 415, decided after the trial of this case, has indicated the general view that in the absence of a contrary indication by Congress, a defendant charged with offenses under statutes of this character may not be convicted and punished for stealing and also for receiving the same goods.

In *Heflin*, which was a prosecution under the bank robbery statute [18 U.S.C.A. § 2113] it was held that Congress did not intend to subject to double punishment

² The authorities appear to be in conflict where one is present at the scene of the crime, aiding in the commission of the larceny, but not taking part in the actual caption of the property; some cases hold that such person may be convicted of both larceny and receiving, while others hold that this may not be done. See *Anno*, 136 A.L.R. 1087, pp. 1101-1103.

a person who robbed a bank and received the fruits of the robbery. The Court said, at page 419:

" * * * it seems clear that subsection (c) was not designed to increase the punishment for him who robs a bank but only to provide punishment for those who receive the loot from the robber. We find no purpose of Congress to pyramid penalties for lesser offenses following the robbery. * * * "

The Court did not discuss the common law distinction between an accessory before the fact and a person actually partaking in the theft, but the language of the opinion precludes such a distinction. The decision was based, not upon any constitutional ground, but upon the view that Congress, by making it an offense to receive the stolen money, intended to reach an entirely distinct group of persons, and not to proliferate the punishment of those who commit robbery in violation of the statute. In saying " * * * we think Congress was trying to reach a new group of wrongdoers, not to multiply the offense of the bank robbers themselves," the Supreme Court would seem to refute any suggestion of a congressional purpose to draw a technical line whereby, while the thief may not be prosecuted as a receiver, his accessory may be answerable for both offenses.

The Government, however, argues that the Heslin decision is not applicable here because it involved the bank robbery statute [18 U.S.C.A. § 2113] with its particular legislative history, while the case before us involves another statute, that dealing with the theft of Government property [18 U.S.C.A. § 641]. We perceive no differences between the two statutes or their legislative histories justifying divergent interpretations in respect to the issue before us.

In each statute, the first part makes the theft itself a crime, while a subsequently added paragraph deals with receivers of the stolen property. In *Heflin*, the Supreme Court, after observing that the legislative history of § 2113(c) was meager, pointed out that subsection (c), dealing with receiving, came into the law later than the subsection pertaining to the actual robbing of a bank. The same, however, is true of § 641, under which Virginia Milanovich was prosecuted. The first paragraph, making it an offense to steal Government property, has its origin in the act of March 2, 1863, ch. 67, 12 Stat. 696, 698; the second paragraph, pertaining to receivers, is derived from the act of March 3, 1875, ch. 144, § 2, 18 Stat. 479. The Government has failed to point out anything in the legislative history of the two sections requiring different constructions. Moreover, we find no reason to think that it was the congressional purpose to punish for stealing Government property and also for receiving the same, although it is now settled that one may not be convicted for robbing a bank and also for receiving the fruits of the crime.

Virginia Milanovich received concurrent sentences, ten years upon the conviction for larceny and five years upon the conviction for receiving the stolen money. Though we think the sentence for receiving should be stricken, we appropriately affirm the judgment of commitment which is fully supported by the conviction on the larceny count.

The application of the rule, that one who procures, aids or supports a larceny to such an extent that he is properly convicted as a principal may not also be punished for receiving the loot creates no inconsistency in the verdict. It does not obscure the jury's finding. Though we now hold, following *Heflin*, that the statute which makes receipt

of the money a Federal crime was intended to reach a class of persons other than those guilty of the larceny, it is only because this defendant stands properly convicted of the larceny that the rule comes into play. Under these circumstances, avoidance of proliferation of the offense of larceny requires the vacation of the sentence for receiving the money; it does not infect the conviction on the larceny count.

Clearly, the jury found that Virginia Milanovich aided and participated in the larceny to such an extent as to warrant her conviction of larceny. The verdict of guilty on the larceny count is abundantly supported by the evidence.

It is suggested that, if properly instructed, the jury might have found her guilty of receiving rather than of larceny. If we accept the facts as found by the jury, as we must, the jury had no such alternative. Only if the jury found that she was innocent of the larceny and that possession of the money was not hers, actually or constructively, from the time of taking, could it have properly found her guilty on the receiving count. Since, plainly, the jury did find that she was a participant in the larceny, its only alternative, under the rule of law we now declare, was to convict her of larceny and acquit her on the receiving count.

In light of the Supreme Court's decision in *Heflin*, we think the appropriate instruction the jury should have been to acquit on the receiving count if it should find her guilty on the larceny count. Since the jury's findings are plain, this conditional direction of an acquittal on the receiving count can be done as well after the verdict as before. This is what the Supreme Court did in *Heflin*.

The case is within the rule of affirmance of the judgment of commitment if supported by a proper conviction upon one count notwithstanding the fact that a concurrent sentence was improperly imposed upon another count. *Heflin v. United States*, 358 U.S. 415; *Hirabayshi v. United States*, 320 U.S. 81; *Abrams v. United States*, 250 U.S. 616; *Claassen v. United States*, 142 U.S. 140; *Harms v. United States*, 4 Cir., 272 F.2d 478.

The sentence on the receiving count will be vacated, but that does not require a reversal of the judgment.

2. Other Assignments of Error

Five other assignments of error are made on behalf of both appellants, but, in our view, none of them warrants extensive discussion. At the beginning of the trial, the court granted the defendants' motion to exclude the witnesses. However, the trial judge refused the defendants' further request that the witnesses be instructed not to discuss their testimony. The exclusion of witnesses from the courtroom is discretionary, and it has been further held, in an opinion of Judge Learned Hand, *United States v. Chiarella*, 184 F. 2d 903, 907, that: "*A fortiori* an instruction to them not to discuss the evidence while out of the courtroom is also discretionary." It does not appear here that the witnesses did communicate concerning their testimony, and no prejudice to the defendants and no abuse of discretion is shown. We wish to indicate our view, however, that ordinarily, when a judge exercises his discretion to exclude witnesses from the courtroom, it would seem proper for him to take the further step of making the exclusion effective to accomplish the desired result of preventing the witnesses from comparing the testimony they

are about to give. If witnesses are excluded but not cautioned against communicating during the trial, the benefit of the exclusion may be largely destroyed.

The next asserted error is that the court improperly limited cross-examination of one of the Government's witnesses. The limits imposed were not improper because the point sought to be developed had already been inquired into at great length. The defense attorney persisted in cross-examining about the witness' possession of a key to a certain apartment. The court made it clear that the cross-examiner was free to interrogate fully as to the relationship between the witness and the girl he had been visiting, and the restriction was merely against an indirect attack on the reputation of a person not then on the stand.

It is claimed that the court erred in its refusal to instruct the jury that where the Government relies on circumstantial evidence, such evidence must exclude every reasonable hypothesis except guilt. This instruction was requested in amplification of the judge's charge. While there are precedents in lower courts for such an instruction, the Supreme Court has deprecated it. Circumstantial evidence has been said by the Court to be intrinsically like direct evidence; both kinds involve danger of error and always the jury must weigh the evidence and the inferences to be drawn. Where the jury has been adequately instructed on the required standards of proof and the law of reasonable doubt, an additional instruction of the type requested on circumstantial evidence is unnecessary, and has been called "confusing and incorrect," *Holland v. United States*, 348 U.S. 121, 139.

The appellants claim to have been prejudiced by the trial judge's rebuking a Government witness. The witness did

not, when first asked a question by the prosecutor, answer correctly; and then after the correct answer was elicited, the court merely admonished her to tell the truth. The court's action was entirely proper, and it is difficult to see how it could have been prejudicial to the defendants.

The last alleged error relates to the trial judge's urging the jury to try to come to an agreement. After the jury had deliberated many hours, the trial judge gave them supplemental instructions on the importance of attempting to reach a verdict. We find in these instructions no undue pressure on any of the jurors to change their views.

Affirmed.

SOBELOFF, Chief Judge, concurring in part and dissenting in part:

I fully concur in the opinion and judgment of the court that there was no error in the trial of Mike Milanovich and that his conviction should be affirmed. Also I agree with the court in its frank recognition that as to Virginia Milanovich the District Court erred in failing to instruct the jury, as requested, that they could not convict her of both larceny and receiving the goods stolen. However I do not agree that the error can be deemed nonprejudicial and therefore does not require reversal of the judgment as to her.

It is difficult to convince oneself that Virginia Milanovich was not harmed by the admitted error. It is notable that, although her husband, who was convicted of larceny only, was sentenced to a five year term, her sentence for the

larceny was ten years. Who can say that if she had been convicted on the larceny count only, the sentence would still have been ten years? Does not the situation strongly suggest that the five year sentence for receiving was made concurrent with the ten year sentence for larceny precisely because the latter already reflected the punishment for the receiving? True, this cannot be demonstrated one way or the other, but the uncertainty must in fairness be resolved in favor of the defendant.

However, even if it could be assumed that Virginia Milanovich's ten year sentence for larceny did not reflect punishment for receiving, I think that she is entitled to a new trial for a more fundamental reason. The majority takes the position that the jury had no alternative but to convict her of larceny and not of receiving. The opinion goes on to say that the appropriate instruction to the jury "should have been to acquit on the receiving count if it found her guilty on the larceny count." I think the proper instruction would have been that the jury could convict of either larceny or receiving but not both. The judge should not, I submit, indicate to the jury that the larceny and not the receiving is the principal offense.

The result reached by the majority is made possible only by assuming that larceny was the primary offense of which Virginia was guilty, and that the receiving count is of a secondary character coming into play only after the defendant has been acquitted of the larceny. This is contrary to the traditional idea concerning larceny and receiving, that they are separate, distinct, and inconsistent offenses. The two crimes contemplate separate individuals performing entirely different roles. *Kirby v. United States*, 174 U. S. 47 (1899); *Heflin v. United States*, 358 U. S. 415

(1959); *Springer v. State*, 102 Ga. 447, 30 S. E. 971 (1897); *People v. Barnhill*, 333 Ill. 150, 164 N.E. 154 (1928); *State v. Tindall*, 213 S. C. 484, 50 S. E. 2d 188 (1948); 2 Wharton's Criminal Law and Procedure (1957 ed.) section 566; 45 Am. Jur., Receiving Stolen Property, section 2. The general rule, where one cannot be convicted of both stealing and receiving the same goods, is that the prosecution need not elect between counts but such election is for the jury, upon proper instructions. 45 Am. Jur., Receiving Stolen Property, section 13 and section 20. By the affirmance of the conviction, the jury is deprived of its function to make the choice, and instead an appellate court makes it.

If Virginia Milanovich had been a principal in the first degree, i.e., one of the actual thieves, with the evidence overwhelmingly establishing larceny rather than receiving, then perhaps the reasoning of the majority would be more plausible, though still questionable. See *People v. Daghita*, 301 N.Y. 223, 93 N. E. 2d 649 (1950). In the present case, however, although only one overall transaction was involved (thereby precluding a conviction for both offenses), there was different evidence establishing each offense. While the receiving by the actual thieves took place immediately upon the theft, we do not know from the record when Virginia received the goods. There was separate and distinct evidence connecting her with receiving. She was seen two weeks later counting the money and a suitcase with the money was found in her home. The evidence implicating her in the larceny, i.e., assisting in the planning of the theft and going to the scene of the crime, consisted entirely of the testimony of admitted thieves, while the testimony showing receiving was corroborated by the additional physical proof, produced by reputable witnesses, of

the suitcase of money found in her home. The jury, which admittedly deemed the evidence sufficient to establish both offenses, might well have thought the evidence of receiving was the more credible; if told that they could convict of one charge only, they might well have preferred the receiving count. For the receiving Virginia Milanovich was given only five years. The choice should have been left to the jury, and since they might reasonably have convicted of receiving instead of larceny, and since a lesser sentence was imposed for receiving, this court should not allow the greater sentence to stand. See *State v. Sweat*, 70 S. E. 234 (S. C., 1952), where in a factual situation similar to the present one, the Supreme Court of South Carolina held that the conviction of the defendant for receiving rather than larceny was justified. It cannot be assumed that if she had been convicted of the receiving rather than the larceny, the court would then have imposed a ten year sentence instead of five.

It is suggested that the case falls within the rule, exemplified in a long line of federal decisions, that where the judgment is on an indictment containing multiple counts, if any one of them, standing alone, is good and will support the judgment, it will be affirmed. These cases all involved attacks upon one or more counts of an indictment on the ground that the counts did not state facts sufficient to constitute an offense (*e.g.*, *Classen v. United States*, 142 U. S. 140), or that the counts charged an offense which was not constitutionally permissible (*e.g.*, *Hirabayshi v. United States*, 250 U. S. 81), or that the evidence was insufficient to convict under one or more of the counts (*e.g.*, *Abrams v. United States*, 250 U. S. 616). In such cases, if one count was found unobjectionable on the above grounds, and the sentence did not exceed what could lawfully have been

imposed upon that count, the conviction was affirmed. The present case poses a quite different problem. The defendant's attack is not directed at one or more independent counts of an indictment but at the jury's failure, because of erroneous instructions, to elect between the two counts.

It bears repeating that the validity or sufficiency of none of the counts is assailed. Rather the complaint is that if the jury had been correctly instructed, the jury might have elected to acquit of larceny and convict of receiving, for which the sentence imposed was only five years. The rule of the above cases is applicable when there is one good count *unaffected* by the others, the bad counts. Here, however, the larceny count is not a "good" count unaffected by the receiving. The two counts are not independent but inter-related. They do affect each other. Either standing alone would be good, but standing together, convictions upon both are inconsistent as a matter of law, when directed against the same person. Thus, because of the erroneous instructions, the larceny count will not support the ten year total sentence.

Nor does *Heflin v. United States*, 358 U. S. 415 (1959), afford any support for the judgment below. In *Heflin*, the defendant moved to vacate his sentence under 28 U.S.C.A. section 2255, and while the reported opinions do not specify which sentence was being attacked, the inference is clear that the defendant was asking only that the receiving sentence be struck down. Here we have a direct appeal from the conviction, not an attempt to revise a sentence.

Moreover, the result reached by the majority appears to be directly contradictory to the decided cases involving the specific problem here, *i.e.*, the appropriate remedy where

there is a concededly erroneous conviction for both stealing and receiving the same goods. Although there appear to be no federal cases exactly in point, the state cases have generally reversed such convictions. In *Commonwealth v. Haskins*, 128 Mass. 60 (1880), the leading case on this subject, the defendant was indicted for both larceny of a cow and receiving it knowing it to have been stolen. The jury found him guilty of both counts, but after the verdict, the trial judge, upon the state's motion, allowed a *nolle prosequi* to be entered as to the receiving count. This attempt of the prosecutor to retrieve the situation proved unavailing. In reversing the conviction, the Supreme Judicial Court of Massachusetts said:

"The record, therefore, notwithstanding the entry of the *nolle prosequi* shows that the defendants had been convicted by the jury upon both counts; and although, as a legal effect of a conviction upon each count it cannot be said strictly that it is an acquittal upon the other, yet the finding of guilty upon both is inconsistent in law, and is conclusive of a mistrial. It would have been quite proper, before the record and affirmation of the verdict, for the presiding judge to have called the attention of the jury to their misunderstanding of his previous instructions, and to have explained to them the mode by which it became their duty, if they convicted upon either of the counts, to acquit upon the other, and to have required of them to retire for further deliberation. . . . After the affirmation of the verdict, when there was no means of knowing of record upon which count the jury intended to convict, as there was no right in them to convict upon both, to assume that the error is corrected by a *nolle prosequi* of either count by the district attorney, is to permit the district

attorney to determine, instead of the jury, upon which count the defendants were guilty. But the *nolle prosequi* corrects no error, and has no effect upon the record as it stood prior to its entry. The record showed a verdict so inconsistent with itself, and so uncertain in law, that no judgment could be entered upon it."

This reasoning is cogent and convincing, not only as to the inability of the prosecutor to second guess the jury but also to delimit the prerogative of the appellate court.

In *Bargesser v. State*, 94 Fla. 404, 406, 116 So. 12 (1928), where the defendant was improperly convicted of larceny of an automobile and also receiving the same, the Supreme Court of Florida stated:

"Although a count charging each of these offenses against the same person and with respect to the same property may properly be included in one information, a verdict which in effect finds the defendant guilty both as a principal in the larceny and as a receiver of the same goods which he himself has stolen is inconsistent and no judgment can be rendered upon it, *although the evidence might sustain a conviction under either count.*" (Emphasis supplied).

It is no answer in your case, therefore, to say, "the verdict of guilty on the larceny count is abundantly supported by the evidence." Returning to the Florida case, the court concluded at page 408:

"Since the defendant, under the evidence of this case, could not in law be guilty of both of these offenses, of which one did the jury find him guilty? The

proof renders this uncertain. Under the circumstances the verdict does not aid the matter, nor can the verdict be construed under the usual rules, with reference to the pleadings and proof so as to clarify the situation. Since the verdict is one which the law does not authorize, the judgment entered thereon must be and is hereby reversed."

See also *Tobin v. People*, 104 Ill. 565 (1882); *State v. Hamilton*, 172 S. C. 453, 174 S. E. 396 (1934); 32 Am. Jur., Larceny, section 155; and cases cited in Anno., 136 A. L. R. 1087.

To summarize: Just as it is not for judges but for the jury, where a jury trial has been prayed, to find a verdict of guilty, however plain the case may appear to be, so judges may not assume to choose between alternatives available to the jury. Judges may not do so even for the laudable purpose of preventing the possibility of error on the jury's part. Likewise, if guilt is pronounced on two counts where under proper instructions conviction could be permitted on only one, neither the district judge nor the appellate judges may take it upon themselves to speculate which count the twelve jurors would have unanimously picked if they had been correctly instructed. Virginia Milanovich was entitled to have the choice made under proper instructions by the jury before whom she elected to be tried; without this, she may not be deprived of her liberty.

Since we cannot be certain what the jury would have decided if not erroneously charged, the doubt must be resolved in her favor. Either she should be given the benefit of the lesser sentence, or a new trial should be awarded.

FILE COPY

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JUN 3 1960

No. 79

JAMES A. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

**MIKE MILANOVICH AND VIRGINIA MILANOVICH,
PETITIONERS**

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

**J. LEE RANKIN,
Solicitor General,**

**MALCOLM RICHARD WILKEY,
Assistant Attorney General,**

**RICHARD W. SCHMUE,
Attorney,
Department of Justice,
Washington 25, D. C.**

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 910

**MIKE MILANOVICH AND VIRGINIA MILANOVICH,
PETITIONERS**

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Vol. III, 12-28) is reported at 275 F. 2d 716.¹

¹ Petitioners have lodged a three-volume, separately-paginated record in this Court, which will be referred to by appropriate volume numbers. In addition, we are lodging with the Clerk the complete six-volume trial transcript, which is consecutively paginated and which will be referred to as "Tr."

JURISDICTION

The judgment of the court of appeals was entered on March 8, 1960. Mr. Chief Justice Warren extended the time for filing the petition for a writ of certiorari to May 7, 1960, and the petition was filed on May 6, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals properly vacated Virginia Milanovich's conviction for receiving stolen property, leaving her conviction and sentence for larceny of the same property in effect.

2. Whether the trial court's refusal to instruct witnesses excluded from the court room not to discuss their testimony was prejudicial error.

STATUTE INVOLVED

18 U.S.C. 641 provides in pertinent part:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof, or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if

the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

STATEMENT

Counts I and II of a four-count indictment returned in the district court for the Eastern District of Virginia charged the petitioners, husband and wife, and others with the commission of larcenies at the Post Exchange of the United States Naval Air Station, Norfolk, Virginia (Count I), and at the Commissary Store of the United States Naval Amphibious Base,² Little Creek, Virginia (Count II), in violation of 18 U.S.C. 641, *supra* (Tr. 1397-1398). Counts III and IV charged the petitioners with receiving and concealing the stolen goods from the installations in violation of the same statute (Tr. 1398-1399). Three accomplices pleaded guilty, and testified for the Government. Following a trial by jury, petitioners were convicted of the larceny charged in Count II (Amphibious Base), and in addition, petitioner Virginia Milanovich was convicted of receiving and concealing stolen goods charged in Count IV (goods from the Amphibious Base theft) (Tr. 1440). Petitioners were found not guilty on Counts I and III (Air Station; larceny and receiving), the court having earlier granted petitioner Mike Milanovich's motion for acquittal on Count IV (Amphibious Base, receiving).

² The United States Amphibious Base and the United States Naval Air Station will be referred to, respectively, as "Amphibious Base" and "Air Station."

(Tr. 1384, 1399, 1440). Mike Milanovich was sentenced to serve a term of imprisonment of five years. Virginia Milanovich received a ten-year sentence for the larceny, and a concurrent five-year term of imprisonment for the receiving. On appeal, the court of appeals vacated the conviction of Virginia Milanovich on the receiving charge, and affirmed the larceny convictions of both petitioners, one judge concurring in part and dissenting in part (Vol. III, 12-28).

The pertinent facts as to Counts II and IV, the only counts on which the jury convicted, may be summarized as follows:

1. In late May or early June 1958, Mike Milanovich drove Benjamin Guerrieri to the Commissary Store at the Amphibious Base in order for Guerrieri to look at the store safe. Mike Milanovich said that he didn't "know exactly what kind of a safe" was there, and that "it would be a good idea to take a look at it first to see what kind of equipment" would be needed (Tr. 739-740). Mike Milanovich, Guerrieri, Clayton Grimmer, and Christ Sofocleous subsequently purchased some tools from local stores (Tr. 342-346, 374, 769-770, 840-842; see Tr. 395-396, 654).

At about midnight of June 1, 1958, Mike Milanovich, accompanied by his wife, Virginia, drove Guerrieri, Grimmer, and Sofocleous to the Commissary Store at the Amphibious Base (Tr. 739-741, 782, 808-809, 824, 850, 960). Guerrieri, Grimmer, and Sofocleous got out of the car and proceeded to break into the Commissary Store, while Mike and Virginia Milanovich drove off and parked. A few hours later,

Mike rapped on the window of the Commissary and told the three men inside "to hurry up because it was almost daylight" (Tr. 741-742, 803). Shortly thereafter, the three men finished rifling the safe and left the Commissary with over \$14,000 in currency and silver. They proceeded to a predesignated place where they were to be picked up by the Milanoviches (Tr. 743). When the Milanoviches did not show up, the three men buried the money in a nearby woods, and proceeded to another predesignated place, outside the base, where they were subsequently picked up by Virginia Milanovich and another woman (Tr. 743-745, 783, 803-804, 812, 827, 962). Shortly thereafter, Virginia drove one of the accomplices back to the base for the money, but the money was not retrieved because there were "too many people around" (Tr. 745, 812). That afternoon, Mike and Virginia Milanovich, together with Guerrieri, Grimmer, and Sofocleous, returned to the base for the money. The money, however, was not retrieved due to a large amount of "activity" on the base (Tr. 745-746). Guerreri, Grimmer, and Sofocleous testified that they never received any of this money (Tr. 746, 812, 965).

On June 19, F.B.I. agents secured permission from Mike Milanovich to search the Milanovich home. During the search, the agents found a suitcase which contained two loaded revolvers and silver totaling \$501.60, and a lady's handbag which contained \$498.20 in silver (Tr. 417, 545-546, 551; see Tr. 425). When the agents inquired as to the ownership of the handbag, Virginia Milanovich, in turn, inquired of her friend, Millie Gauger, "Don't you recall, Millie, I

loaned that to you?" (Tr. 423). Millie "would not answer" the inquiries from the agents (Tr. 424).³

2. At the trial, the court granted petitioners' motion to exclude the witnesses from the court room while testimony was being taken. Petitioners' additional request that the court instruct the witnesses "not to talk to anybody until his testimony is completed" was denied (Tr. 363-365, 368). The court noted that the "witnesses were separated, and that it would not "nursemoid" them, or provoke a mistrial application in the event that a witness should disobey the proposed admonition.

Sofocleous testified that he spoke to Guerreri "about home" after he (Sofocleous) left the witness stand (Tr. 814). Grimmer testified that he discussed the case with his wife after she testified, and that he discussed the case "[s]omewhat" with Guerreri either by passing notes while in jail, or by talking with him while being transported from jail to court (Tr. 963-964; see Tr. 946-947). In one of the notes, Grimmer asked Guerreri what "was [he] going to do" (Tr. 766). Guerreri sent "about two" notes to Grimmer while in jail (Tr. 764), at least one of which was "more or less of a personal nature" (Tr. 766).

³ In late June 1958, in Cleveland, Mike and Virginia Milanovich, Guerreri, Donna Grimmer (the wife of accomplice Grimmer) and others met in the apartment of Mike Milanovich's sister (Tr. 748-749). At this meeting, Mike and Virginia Milanovich indicated that they wanted Grimmer, who was then in custody, and Guerreri to take the blame for the thefts, and that they would "compensate" the two men "in some various ways" (Tr. 750-751). In addition, Virginia Milanovich threatened to kill Donna Grimmer in the event that her husband testified (Tr. 537-540).

ARGUMENT

1. By drawing an analogy to the National Bank Robbery Act (18 U.S.C. 2113), petitioner Virginia Milanovich contends (Pet. 4-5) that the jury should have been appropriately instructed that it could not convict her of both larceny and receiving stolen goods, and that, if it were to convict her at all, the jury would have to elect between convicting her of one offense or the other. She argues that the jury was precluded from making this election when the court of appeals affirmed her larceny conviction and vacated her receiving conviction, and that, since the jury "might reasonably have convicted [her] of receiving instead of larceny, and since a lesser sentence was imposed for receiving, this Court should not allow the greater sentence to stand."

In *Prince v. United States*, 352 U.S. 322, this Court held that, although Congress meant to establish lesser offenses in the National Bank Robbery Act, "there was no indication that Congress intended also to pyramid the penalties" for offenses committed under that statute. *Id.* at 327. Therefore, the Court concluded that Congress did not intend to punish bank robbers both for entry into a bank with intent to rob and for the consummated robbery. Similarly, in *Heflin v. United States*, 358 U.S. 415, 419-420, the Court held that the National Bank Robbery Act was not intended to punish bank robbers both for the robbery and receiving stolen property. But the most that these cases require⁴ is that there be no double punishment

⁴ *Prince* and *Heflin* may not be controlling since the present case was tried under a different statute with its own

for acts growing out of one transaction unless that intention has been spelled out by Congress. In the instant case, the vacation of petitioner Virginia Milanovich's conviction on the receiving charge precludes any claim of double punishment for acts arising out of the same transaction. Her present ten-year sentence is within the maximum penalty for both larceny and receiving. Therefore, for purposes of sustaining her present sentence, it would be immaterial on which offense the sentence was imposed.

Moreover, this Court did not require in either *Prince* or *Heflin* that the defendant be retried so that the jury could decide on which offense the conviction should rest. Instead, the Court indicated that the entry and receiving offenses, respectively, were subordinated to the crime of bank robbery in the sense that they were intended to reach only persons not guilty of the principal offense, bank robbery. Similarly, as the court below held, the receiving offense "was intended to reach a class of persons other than those guilty of the larceny," and only if the petitioner was acquitted of the larceny could the jury convict her of receiving stolen goods. Since the jury convicted her of the larceny, its only alternative was to acquit her of the receiving charge. As the jury did not so acquit the petitioner, the court below correctly stated that acquittal could "be done as well after the verdict as before."

2. Petitioners contend (Pet. 5-6) that they were deprived of a fair and impartial trial by the court's

legislative history. The court of appeals, however, rejected this contention advanced by the government below.

failure to admonish the witnesses to refrain from discussing their testimony with others. It is well settled, however, that the decision whether to exclude witnesses from the court room in order to prevent their modifying their stories to be consistent with the testimony of other witnesses is vested in the sound judicial discretion of the trial court, and that the court's refusal to exclude the witnesses is not an abuse of that discretion unless manifest prejudice results to the defendants. See, *e.g.*, *Holder v. United States*, 150 U.S. 91, 92; *Mitchell v. United States*, 126 F. 2d 550, 553 (C.A. 10), certiorari denied, 316 U.S. 702; *Johnston v. United States*, 260 F. 2d 345, 347 (C.A. 10), certiorari denied, 360 U.S. 935; *Gates v. United States*, 122 F. 2d 571, 577 (C.A. 10), certiorari denied, 314 U.S. 698; *United States v. 5 Cases, etc.*, 179 F. 2d 519, 522 (C.A. 2), certiorari denied, 339 U.S. 963. It follows *a fortiori* that when the court does exclude the witnesses, as in the instant case, its refusal to admonish the witnesses to refrain from discussing their testimony is also clearly within its judicial discretion in the absence of manifest prejudice. See *United States v. Chiarella*, 184 F. 2d 903, 906-907 (C.A. 2).⁵

Here, no showing has been made that the petitioners were prejudiced. On the contrary, each of the conversations between witnesses was clearly not harmful. Sofocleous testified that he merely spoke to Guerreri "about home," and Grimmer stated that he had only

⁵ The court of appeals on rehearing vacated the sentence on two of the four counts on other grounds, 187 F. 2d 12, remanded for resentencing, 341 U.S. 946.

discussed the case "[s]omewhat" with Guerreri.⁶ Moreover, the brief and nondetailed nature of the direct examination of Grimmer (Tr. 849-851) precluded any reasonable possibility that either he and Guerreri or he and his wife matched the testimony of the other. And the fact that Grimmer and his wife testified to altogether different stages of the case eliminated any possibility that they had matched their testimony. See *United States v. Cephas*, 263 F. 2d 518, 521 (C.A. 7; *Witt v. United States*, 196 F. 2d 285 (C.A. 9)).⁷

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

MALCOLM RICHARD WILKEY,
Assistant Attorney General.

RICHARD W. SCHMUDE,
Attorney.

JUNE 1960.

⁶ Compare *Holder v. United States*, *supra*, where the witnesses were ordered to leave the courtroom, but one remained. This Court, noting that the witness could be proceeded against for contempt, sustained the conviction even though the witness testified after hearing the testimony of other witnesses. Clearly, there was a much more serious possibility of prejudice than in the instant case.

⁷ Contrary to petitioners' assertion (Pet. 5-6), the fact that certain witnesses had talked together was not brought to the trial judge's attention until after these witnesses had testified. (Compare Tr. 363-368 with Tr. 764-766, 814, 946-947, 963-964.)

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JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No .79

MIKE MILANOVICH
and
VIRGINIA MILANOVICH,
Petitioners

vs.

UNITED STATES OF AMERICA
Respondents

On Writ of Certiorari to the United States Court of
Appeals for the Fourth Circuit

BRIEF FOR THE PETITIONERS

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Appeals for the Fourth Circuit

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The petitioners were convicted in the District Court of the Eastern District of Virginia on a count charging them with Larceny, and also as to Virginia Malanovich on a count charging her with receiving stolen goods. Judgement of the District Court was affirmed by the Court of Appeals, 275 F., 2d, 746 (Fourth Circuit 1960), Certiorari granted, 80 S. C. 1598, 28 L.W. 3368 (June 20, 1960).

JURISDICTION

The judgement of the United States Court of Appeals for the Fourth Circuit was entered on March 8th, 1960. Writ of Certiorari was granted on June 20th, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

STATUTE INVOLVED

18 United States Code 641, provides:

"Whoever embezzles, steals, purloins, or knowingly converts to his use or another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department of agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his use, or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than \$10,000.00 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of One Hundred Dollars, he shall be fined not more than One Thousand Dollars or imprisonment more than one year, or both."

QUESTIONS PRESENTED

1. Court erred in failing to instruct the jury that a conviction would not lie for both Larceny and receiving stolen goods. This question is applicable to

Virginia Milanovich, as she alone was convicted of both offenses.

2. Court erred in failing to instruct the witnesses not to discuss their testimony, which was prejudicial error.

STATEMENT OF THE CASE

The petitioners, Mike Milanovich and Virginia Milanovich, husband and wife, and others, were charged in a four count indictment of certain larcenies. Petitioner, Mike Milanovich, was found guilty of the Larceny charged in Count 2, from the United States Naval Amphibious Base, Little Creek, Virginia. The petitioner, Virginia Milanovich, was also found guilty of the Larceny charged in Count 2, Amphibious Base, and in addition, she was found guilty of receiving and concealing stolen goods (same goods as set forth in Count 2) charged in Count 4. (R. 9, 10, 11 and 12). The petitioners were tried by jury and upon their conviction the Court sentenced Mike Milanovich to serve a term of five years. Virginia Milanovich received a ten year sentence for the Larceny, and a concurrent five year term of imprisonment for the receiving. On appeal, the Court of Appeals vacated the conviction of Virginia Milanovich on the receiving charge, and affirmed the Larceny conviction of both petitioners, one judge concurring in part and dissenting in part. (R. 345 et seq.)

The testimony against the Milanovichs consisted chiefly of that of the three accomplices Benjamin T.

Guerrieri, Christ Sofocleous, and Clayton T. Grimmer, all of Youngstown, Ohio. (R. 85, 132 and 158). The three accomplices stated that they, together with the petitioners, had previously planned the robbery (R 87, 93), that all five drove at night in Mike Milanovich's automobile (R. 93) to the Amphibious Base, and that the three accomplices actually broke into the Commissary Store on the Base where they opened the safe (R. 94), while the Milanovichs waited in their automobile outside the Commissary. The break-in at the Amphibious Base Commissary took longer than had been anticipated. The Milanovichs left the Base and did not wait, as had been planned, for their confederates to finish. (R. 95). The three accomplices then buried the money in the vicinity of the Commissary Store (R.95) and left the Base by way of the river bank through a hole under the fence. (R 95). This Larceny took place on June 2, 1958, in the early morning hours.

On June 19, 1958, approximately two weeks later the FBI Agents, after securing permission from Mike Milanovich to search his home, found therein two separate containers containing approximately One Thousand Dollars in silver (R.76). There is no question that the money was found in the Milanovich home, but Virginia Milanovich denies that any part of the money was hers or that she had any part in handling the money. R.239).

Throughout the lengthy jury trial the Trial Judge was asked to admonish the witnesses not to discuss their testimony, this, the Trial Judge refused to do. (R.33, 50, 51, 297, 298). The similarity of the testimony of the

three accomplices, Grimmer, Guerrieri and Sofocleous clearly indicates that they, and they alone intended and were doing all that they could to convict Mike and Virginia Milanovich. At no time did the Court admonish the witnesses not to discuss their testimony. Repeatedly the attorney for the defendants, requested the Court to admonish the witnesses, and the Court said, "You have made very insistent demands about my guarding these witnesses. I do not propose to do it. Now, I am not going to instruct them to do anything." (R. 51).

ARGUMENT

1. Convictions for Larceny and receiving the same property:

The petitioners' attack is not directed at one or more of the independent counts of the indictment, but to the jury's failure, because of erroneous instructions, to elect between the two counts; one, of Larceny; and the other, of receiving.

The crime of Larceny and receiving are separate, distinct, and inconsistent offenses. The two crimes contemplate separate individuals performing entirely different roles. Both at common law and under the Federal Statutes, the settled rule is that a person cannot be convicted for stealing goods and receiving them also. 2 Wharton's Criminal Law and Procedure (1957 Edition) Section 566; 45 A. M. JUR., Receiving Stolen Property, Section 2. In Heflin vs. United States, 358 U. S. 415 (1959) at 419, the Court said, "It seems clear that Sub-section (c) was not designed to increase

the punishment for him who robs a bank but only to provide punishment for those who receive the loot from the robber. We find no purpose of Congress to pyramid penalties for lesser offenses following the robbery. — but in view of the Legislative History of Sub-section (c) we think Congress was trying to reach a new group of wrongdoers, not to multiply the offense of the bank robbers themselves”.

In Heflin, the Supreme Court, observed that the Legislative History of Section 2113, (c) was meager, pointing out that Sub-section (c), which dealt with receiving, came into the law later than the Sub-section pertaining to the actual robbing of a bank. The same is true of Section 641, under which Virginia Milanovich was prosecuted. The first paragraph, made it an offense to steal Government property, having its origin in the Act of March 2nd, 1863, Chapter 67, 12 Statutes 696, 698; The second paragraph, pertains to receivers having its derivation from the Act of March 3rd, 1875, Chapter 144, Section 2, 18 Statutes 479. There is nothing in the Legislative History of the two sections, 641, and 2113, which would require a different interpretation. Therefore it appears that it was not the Congressional purpose to punish for stealing Government property and also receiving the same. It is now settled that one may not be convicted for robbing a bank and also for receiving the fruits of the crime. Heflin vs. U. S. (Supra).

Under the evidence presented to the jury, Virginia Milanovich could have been found guilty of either Larceny or receiving but not both. The failure

of the District Court to instruct the jury, as requested, that they could not convict her of both Larceny and receiving the stolen goods was prejudicial and harmful error. The judge should not indicate to the jury that the Larceny and not the receiving is the principal offense. But a proper instruction should have been given to the jury that they could convict of either Larceny or receiving but not both. This instruction was not given.

Virginia Milanovich was not a principal in the first degree; i.e., one of the actual thieves, and the evidence did not overwhelmingly establish Larceny rather than receiving. The jury which admittedly deemed the evidence sufficient to establish both offenses, might well have thought the evidence of receiving was the more creditable; if told that they could convict of one charge only, they might have well preferred the receiving count. For the receiving, Virginia Milanovich was given only five years. The choice should have been left to the jury, and since they might reasonably have convicted of receiving instead of Larceny, and since a lesser sentence was imposed for receiving, this Court should not allow the greater sentence to stand, but refer the case back to the jury under proper instructions.

Virginia Milanovich's complaint is that if the jury had been correctly instructed, the jury might have elected to acquit of Larceny and convict of receiving, for which the sentence imposed was only five years. The two counts are not independent but interrelated. They do not affect each other. Either standing alone

would be good, but standing together, convictions upon both are inconsistent as a matter of law, when directed against the same person.

In *Commonwealth vs. Haskins*, 128 Massachusetts 60 (1880) the leading case on the subject, the defendant was indicted for Larceny of a Cow and receiving it knowing it to have been stolen. The jury found him guilty of both counts, but after the verdict, the Trial Judge, upon the State's motion allowed a nolle prosequi to be entered as to the receiving count.

Reversing the conviction the Supreme Judicial Court of Massachusetts said: "The record, therefore, notwithstanding the entry of the nolle prosequi shows that the defendants had been convicted by the jury upon both counts; and although, as a legal effect if the conviction upon each count it cannot be said strictly that it is an acquittal upon the other, yet the finding of guilty upon both is inconsistent in law, and is conclusive of a mistrial—, to assume that the error is corrected by nolle prosequi of either count by the District Attorney, is to permit the District Attorney to determine, instead of the jury, upon which count the defendants were guilty. But the nolle prosequi corrects no error, and has no affect upon the record as it stood prior its entry. A record showed a verdict so inconsistent with itself, and so uncertain in law, that no judgement could be entered upon it."

There appears to be no Federal cases exactly in point, as to the appropriate remedy where there is a concededly erroneous conviction for both stealing and receiving the same goods; yet the State cases have gen-

erally reversed such convictions. Commonwealth vs. Haskins (Supra). In the case of Virginia Milanovich, in Milanovich vs. United States, 275 F. 2d 716 (Fourth Circuit 1960), the majority said; "In light of the Supreme Court's decision in Heflin, we think the appropriate instruction to the jury should have been to acquit on the receiving count if it should find her guilty on the Larceny count. Since the jury's findings are plain, this conditional direction of an acquittal on the receiving count can be done as well after the verdict as before. This is what the Supreme Court did in Heflin."

"The case is within the rule of affirmates of the judgment of commitment if supported by proper conviction upon one count notwithstanding the fact that a concurrence sentence was improperly imposed upon another count."

"The sentence on the receiving count will be vacated, but that does not require a reversal of the judgment".

To follow the majority opinion of the Fourth Circuit set forth above is to arrive at a result contrary to the traditional idea concerning Larceny and receiving, that they are separate, distinct and inconsistent offenses. In Heflin, the defendant moved to vacate his sentence under 28 U. S. C. Section 2255, while here we have a direct appeal from the conviction, not an attempt to revise a sentence. Both the District Court and the Fourth Circuit Court of Appeals have by their decisions negated the jury trial which was prayed for by Virginia Milanovich. There the jury pronounced guilt

on two counts where under proper instructions conviction could only be for one count, neither the District Judge nor the Appellate Judges should take it upon themselves to speculate which count the 12 Jurors would have unanimously picked if they had been correctly instructed. By vacating the sentence on the receiving count the Appellate Judges are taking the case from the jury and depriving Virginia Milanovich of her liberty unjustly.

As we cannot be certain what the jury would have decided if the proper charge had been given, the doubt should be resolved in her favor. Therefore, a new trial should be awarded Virginia Milanovich under proper instructions. This is a Jury question and not one for the courts to determine and had the jury been properly instructed we do not know whether she would have been found guilty of Larceny or receiving, but certainly she cannot be found guilty of both.

2. Failure to instruct the witnesses not to discuss their testimony:

The exclusion of the witnesses loses all of its value if they are not admonished not to discuss their testimony. This of course, is discretionary with the Court, but when it is brought to the Court's attention that the witnesses are discussing their testimony with each other the request should be granted. The failure of the Court to so instruct the witnesses was prejudicial error and deprived Mike and Virginia Milanovich of a fair and impartial trial. This failure of the Court to so instruct the witnesses was harmful error.

The manifest purpose of the rule being to secure trust and promote the ends of justice and to have testimony of a witness uninfluenced with the testimony of other witnesses. *Roberts vs. State*, 25 So. 238, 240; 122 Ala, 47), and to prevent concert of action among witnesses. *State vs. Pell*, 119 N.W. 154, 140 Iowa 655.

In this particular case it was thought essentially necessary to prevent the material witnesses from discussing their testimony. The defendants were contending throughout the entire trial that the charges against them were a "frame-up", conceived by the three accomplices, Grimmer, Guerrieri and Sofaceous, who had plead guilty and were the key Government witnesses. These witnesses had the opportunity to get together and collude, which is apparent by the record. As the witnesses were not instructed not to discuss their testimony, Mike and Virginia Milanovich should be given a new trial, as it was harmful error.

CONCLUSION

For reasons previously stated, and as it is not for judges but for the jury, where a Jury Trial has been prayed, to find a verdict of guilty, however plain the case may appear to be, so Judges may not assume to choose between alternatives available to the jury. As the Judges in this case have invaded the province of the Jury the petitioners ask that the convictions as they now stand be reversed and a new trial awarded to them.

As to Virginia Milanovich it is not for the Judges to speculate which count the 12 Jurors would have

unanimously picked had they been correctly instructed, therefore as Virginia Milanovich was found guilty of both the Larceny and the receiving, the case should be sent back to the Jury under proper instructions for a new trial.

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UNITED STATES COURT, D.C.

FILED

DEC 21 1960

JAMES R. BROWNING, Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 79

MIKE MILANOVICH ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 338-351) is reported at 275 F. 2d 716.

JURISDICTION

The judgment of the court of appeals was entered on March 8, 1960 (R. 351-352). On April 4, 1960, Mr. Chief Justice Warren extended the time for filing a petition for a writ of certiorari to May 7, 1960 (R. 353). The petition was filed on May 6, 1960, and was granted on June 20, 1960 (R. 353). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a conviction and sentencing for both larceny of, and receiving, the same property was properly corrected in the court of appeals by the vacating of the five-year sentence for receiving, leaving the ten-year sentence for larceny in effect.
2. Whether the trial court's refusal to instruct witnesses excluded from the court-room not to discuss their testimony was prejudicial error.

STATUTE INVOLVED

18 U.S.C. 641:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

* * * * *

STATEMENT

The petitioners (who are husband and wife) were convicted in the District Court for the Eastern Dis-

trict of Virginia of the theft of more than \$14,000 in currency from a commissary store of a United States naval base—a violation of 18 U.S.C. 641 (Count 2). Petitioner Virginia Milanovich was also convicted of receiving and concealing the stolen currency (Count 4).¹

Mike Milanovich was sentenced to 5 years' imprisonment on the larceny count (R. 10). Virginia Milanovich was sentenced to 10 years' imprisonment on the larceny count and 5 years on the receiving count, the terms to be served concurrently (R. 11-12). On appeal, the larceny convictions were affirmed, but the court of appeals vacated the sentence of Virginia Milanovich for receiving stolen property, Chief Judge Sobeloff concurring in part and dissenting in part (R. 341-342, 351-352).

1. THE EVIDENCE

The government's evidence may be summarized as follows:

Prior to the larceny, Mike Milanovich, a Chief Petty Officer (R. 44-45), took Benjamin Guerrieri to the commissary of the naval base, telling him to view the safe, so that they would know what equipment they needed (R. 93). On May 29, 1958, and at other times, Mike Milanovich, Guerrieri, Clayton Grimmer, and Christ Sofocleous purchased tools from local stores and stored them in Milanovich's shed (R. 24, 26, 31, 35, 45-48, 52-53, 88-89, 110-111, 153-154).

¹ The petitioners were acquitted on counts 1 and 3 relating to another theft.

On June 1, 1958, before or at about midnight, the petitioners and the three accomplices drove to the naval base in the Milanovich car. The three accomplices broke into the commissary building and rifled the safe, the operation taking until nearly daybreak (R. 93-94, 118, 130-131, 133-134, 143-144, 158-159, 224-225). A meeting place had been prearranged in case the petitioners were not present when the others emerged, but the petitioners failed to appear at the rendezvous. The others buried the money in the woods close by and proceeded to another predesignated place, outside the base, where they were subsequently picked up by Virginia Milanovich and another woman, Millie Gauger (R. 94-96, 118-119, 135, 144-147, 224-225, 228). Shortly thereafter, Virginia Milanovich drove Guerrieri back to the base for the money, but the money was not retrieved because there were "too many people around" (R. 96, 136; and see R. 58-60). That afternoon the petitioners and the three accomplices, in the guise of a fishing party, returned to the base for the money but did not retrieve it because of "activity" on the base (R. 96; and see R. 54-55). The accomplices testified that they never received any of the money (R. 97, 130, 136, 227).

On the night of June 18, 1958, Virginia Milanovich and Grimmer went to the base to get the money (see R. 98-99). Grimmer and Millie Gauger stayed at the Milanovich house that night (R. 287). Early the next morning, F.B.I. agents went to the Milanovich home, and with the permission of Mike Milanovich searched the house (R. 64, 73, 77, 98-99). They found a suitcase which contained silver currency

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totaling \$501.60 and two loaded revolvers, and a lady's bag which contained \$498.20 in silver currency (R. 64, 73-74, 76). Virginia Milanovich told an F.B.I. agent that she could give no explanation as to where the money had come from, although when confronted with her overnight bag she first stated that it belonged to Millie Gauger (R. 279-280, 287).²

2. THE CHARGE AND THE SENTENCE

The trial judge sustained the motion for acquittal of Mike Milanovich with respect to the receiving count here involved (Count 4), saying (R. 300):

* * * Now, as I will explain to you later, that does not exonerate, nor does it convict Mike Milanovich of the charge of participating in the theft of that money, that is, in the sense that he may have been, and I do not suggest to you that he was, an aider and abetter in the theft of the money, but as will be explained to you later, there is a distinction between the theft of the money and being an aider and abetter in the theft of the money and the charge of receiving, concealing and retaining, with intent to convert to your own use or gain; and as I see it, the only evidence that could possibly

² In the latter part of June, 1958, in the presence of Mike Milanovich, Guerrieri, Milanovich's sister, and others, Virginia Milanovich accused Grimmer's wife Donna of having alerted the F.B.I. for the search of June 19 (R. 98-99). Mike and Virginia Milanovich urged that Guerrieri, who was already implicated and free on bond, and Grimmer, who had confessed, take the entire responsibility for the offenses, in return for compensation (R. 99). In addition, Virginia Milanovich threatened to kill Donna Grimmer if her husband testified against Mike Milanovich (R. 69).

implicate Mike Milanovich on the charge of aiding and abetting and concealing with respect to—aiding, abetting, the receipt, concealment and retention of the money taken from the Little Creek Amphibious Base would be the fact that it was found in a home occupied by him and that he slept there for a few hours that early morning of June 19th. * * *

The judge's charge to the jury also included the following (R. 304, 307):

* * * [T]here is no evidence of the fact that either Mike Milanovich or Virginia Milanovich actually opened any safe or actually removed any of the contents of any safe, and so, as I will explain to you shortly, the question of their guilt, if any, * * * must rest upon whether the fact these two defendants or either of them participated as aiders and abettors in the commission of a crime * * *. [I]f they did participate as aiders and abettors, then they may be found guilty as principals. * * *

Now, the third count * * * states a separate charge, that is, that these defendants did unlawfully receive, conceal and retain with intent to convert to their own use or gain, knowing that the property had been stolen or purloined, this quantity of money. Now, of course, if they had actually removed the contents of the safe themselves, they cannot be guilty of receiving those same contents, but the evidence is clear in this case that neither Mike Milanovich or Virginia Milanovich actually had their hands on the safe or removed any money from any safe. There is no question about that. So, therefore, if they received any money—and I

do not suggest to you that they did or did not receive any money—they must have received it from some other party, and then we go into the discussion of whether or not they received, concealed or retained any portion of the money with intent to convert to their own use or gain and with knowledge of the fact that this money had been stolen or purloined.

And the fourth count is a similar count * * *.

* * * [M]ere knowledge that a crime is about to be committed is not sufficient to make one an aider and abetter, nor is it sufficient if a person, acting without knowledge of the fact that a crime was about to be committed or just had been committed, in some manner innocently aids or abets an individual. There must be present the combination of knowledge of the commission of the crime and some affirmative act, no matter how small, which assisted or aided in the commission of the crime.

When the trial judge asked for exceptions, if any, to the instructions, the petitioners did not raise the objections made at an earlier time to the possibility that receiving might be inconsistent with larceny under the circumstances disclosed by the evidence (R. 15, 22, 231, 296-297). They raised only general objections to the definitions of larceny and of circumstantial evidence (R. 315-317).

At the time of sentencing, the trial judge noted a relatively "favorable" report by the probation officer with respect to the personal life history of Mike Milanovich (R. 333). As to Virginia Milanovich,

However, he noted "a life of crime" both on her own admissions and on the record (R. 337), and imposed a 5-year sentence on Mike Milanovich and a 10-year sentence on Virginia Milanovich on the larceny counts, and a 5-year, concurrent sentence on Virginia Milanovich on the receiving count (R. 337).

3. THE RULING AS TO CAUTIONING OF WITNESSES

At the outset of the trial, the petitioners' motion that the witnesses be sworn "and excluded" was granted (R. 22-23). After the testimony of an F.B.I. agent, the petitioners' counsel stated, "Of course, I realize that it is difficult to control this, but we are requesting the Court, in your discretion, whatever you can do, to keep these witnesses, who have testified, from mingling with other witnesses" (R. 33). The trial judge responded that he could not police such a situation and that people would in any event find out the general nature of the testimony; that the "fine points of the questioning are the matters that, of course, are * * * the main purpose for separating witnesses * * *"; and that counsel could talk with witnesses, but would have no right to persuade them (R. 33). Counsel for the petitioners agreed, "All right, sir. You understand the problem" (R. 33).

Later, the petitioners requested the trial judge to instruct a witness that he was not to talk to anyone with respect to the case or his testimony (R. 50). The judge refused to give such an admonition, observing that the witnesses had been separated, but that he would not provide basis for mistrial applications upon each claimed disobedience of such an admonition

as that proposed,³ and that counsel would be free to explore any genuine impropriety on cross-examination (R. 50-52).

Upon cross-examination of Guerrieri and Sofocleous, it appeared that ~~they~~ they had talked together twice, in the presence of an F.B.I. agent (R. 109, 137). Guerrieri had had opportunity to speak with Grimmer a few times at the jail and sent two notes to him, and Guerrieri and Grimmer were brought to the court together and left together (R. 107-108). Guerrieri testified that the conversation was not related to the case "in so many words"—Grimmer asked "what [Guerrieri] was going to do" (R. 108). Grimmer characterized the talk and notes as "somewhat" related to the case (R. 226).

Grimmer, after the start of the case, talked with his wife about the case and the evidence. But his talks subsequent to her testimony (which was about the statements by Virginia Milanovich after the robbery and after Grimmer's arrest, *supra*, footnote 2, p. 5) were at the jail in the hallway outside the court, while in the custody of the United States Marshal (R. 215-216, 226).

The trial judge, at the close of the trial, determined that there was no showing of prejudice warranting the grant of a motion for a mistrial (R. 297-298).

³The trial judge noted, at a later point, that there were some 50 witnesses who testified, and perhaps 15 or 20 more who did not testify (R. 298).

SUMMARY OF ARGUMENT

I

The petitioners' first contention relates only to Virginia Milanovich, who was convicted of larceny in aiding and abetting the three persons who actually broke open the safe and hid the money. She was also convicted of receiving and concealing some of the money. The court of appeals vacated the sentence on the receiving and concealing count. She now complains that the larceny conviction should be set aside and a new trial granted because the jury, not having been instructed that she could not be guilty of both larceny and receiving stolen property; had no chance to choose between the two offenses.

It is the government's position that the jury's finding of guilt of receiving and concealing, and the imposition of sentence on that ground, was additional to, and independent of, the finding of guilt as to the larceny, and that the reversal of that count in no way affects or invalidates the finding of guilt of larceny.

A. The trial judge instructed the jury extensively and independently as to the offense of aiding and abetting larceny. The testimony amply established the participation by Virginia Milanovich in enabling the three safecrackers to enter the naval base and to escape. No impairment of the instruction on larceny was caused by the trial judge's further charge—not seasonably challenged at the trial as required under Rule 30, F.R. Crim. P.—that while persons actually removing the contents of the safe could not be guilty of "receiving" the same contents, the petitioner unquestionably did not have her hands

on the safe or actually remove the money and so could also be guilty of later receiving the money. It is not part of an instruction or verdict on larceny that the jury must find that a defendant did *not* also receive the money. There is no basis in the evidence, in logic, or in any legitimate conduct of a jury, for speculation that the finding of the jury that Virginia Milanovich also received the money improperly affected the jury's conclusion as to her guilt of the larceny itself.

As against the speculation that the jury, if apprised that only one sentence could stand, might have chosen to find guilt of receiving and concealing rather than of aiding the larceny, it is to be noted that the maximum punishment for both offenses is the same. The verdict accordingly could in no way have been affected, for the jury would have no way of knowing what punishment the judge would impose. The judge, indeed, specifically instructed the jury, again without objection, that the matter of punishment was solely the responsibility of the trial judge and that the jury was to concern itself only with "the determination of the matters of fact" (R. 312).

B. There is no factual inconsistency or impossibility in the receiving and concealing of money by one whose prior relation to the money was not that of an actual possessor, but merely that of an individual who indirectly aided the actual taker. Accordingly, there was no reversible error in having allowed the jury to find the facts as to both offenses, regardless of what sentences might later be found proper. The petitioners' argument to the contrary, and the views of

the dissenting judge below, confuse the rationale of the common law rule as to the relationship between theft and receiving and the rationale of this Court's decision in *Heflin v. United States*, 358 U.S. 415. The common law rule, that a principal of the first degree in larceny could not also be the receiver, was based on the factual difficulty in finding that a person received something from himself. The rule was not extended further than its reason. Hence, at common law and in decisions that follow that rule, it was held that one who participated in the larceny only as an aider and abettor, but did not do the actual taking, could be convicted of both the larceny and the receiving. This is true, moreover, in decisions involving statutes making accessories guilty as principals.

This Court's decision in *Heflin v. United States*, 358 U.S. 415, was that Congress (specifically with reference to bank robbery) did not intend to impose separate punishment for the receipt and concealment of money by the thief, irrespective of whether logically this could or could not occur. We may accept, for the purposes of this case, the ruling of the court below that the *Heflin* rationale applies to the statute here involved and that a defendant may not be subjected to separate punishment for the theft and for receiving, but it does not follow from this ruling that the jury may not properly find the facts as to whether a person actually did both participate in the stealing and also receive the money. So long as the counts are not factually inconsistent—and even at common law it was recognized that they are not—the finding of one fact

in no sense precludes the finding of another, additional, fact supporting guilt.

Where the common law rationale of inconsistent offenses applies—i.e., where it is factually impossible to commit both offenses, so that conviction for one must necessarily exclude the other—there is basis for saying that a jury should decide which of the two alternative offenses was actually committed. But where one act is not alternative to, but merely in addition to, the other, a jury has not failed to perform its function when it has determined that both acts have been committed. Whether the punishment imposed for the two acts is proper or improper is not a matter for the jury to decide, but for the court alone.

In the factual situation here presented, the receiving is in addition to, and not in exclusion of, liability for the taking. Hence, the jury could find that the petitioner committed both acts and the petitioner has achieved all that was her due when she has been held liable to only one punishment.

That a verdict on two counts, although a defendant can be sentenced on but one, does not invalidate a sentence proper under one is illustrated by this Court's decisions in *Prince v. United States*, 352 U.S. 322, 329 (holding that Congress did not intend separate punishment for entering a bank with intent to commit a felony and for the completed robbery) and *Heflin v. United States*, 358 U.S. 415 (holding that one sentenced for bank robbery could not be additionally punished for receiving). It is true that both cases arose on collateral attack, but in neither did the

- Court deem that the judgment was totally invalidated by the jury's finding of both aspects of the crime. It was considered sufficient simply to have the sentence corrected to eliminate the additional punishment. These decisions and the rulings of the courts of appeals preponderantly outweigh the decisions of several state courts cited in the dissent below, which are also in part distinguishable on particular factual and statutory grounds.

In the instant case, where the evidence disclosed and the jury found that petitioner Virginia Milanovich aided the larceny and at a later time received some of the stolen money, the judge by his sentence indicated that he thought a 10-year sentence for the larceny was justified. The fact that the petitioner went beyond the larceny and in addition received some of the stolen money is no reason for according her a new trial. The judge indicated his reason for imposing a 10-year sentence for the larceny on the wife as against 5 years for the husband for the same offense, and that reason was not the additional element of receiving in her case, for he imposed a separate 5-year sentence for that. The reason was the wife's record of "a life of crime" (*supra*, pp. 7-8).

II

The petitioners complain of the fact that, although the trial judge excluded the witnesses from the courtroom, he declined to instruct the witnesses not to discuss the case. The court of appeals below, without dissent on this issue, sustained the judgment as against this objection, relying upon the established

authority that even the exclusion of witnesses from the courtroom is a matter resting in the discretion of the trial judge, and, as stated by Judge Learned Hand, "A *fortiori* an instruction to them not to discuss the evidence while out of the courtroom is also discretionary." *United States v. Chiarella*, 184 F. 2d 903, 907 (C.A. 2), on rehearing vacated on other grounds, 187 F. 2d 12, remanded for resentencing, 341 U.S. 946.

The court of appeals below observed that ordinarily it would be proper for a trial judge to caution witnesses against comparing testimony, but that in the instant case no abuse of discretion by the trial judge appeared. Many of the 5 to 70 witnesses who were to testify had knowledge only as to minor portions of the case. As to the three accomplices—the only witnesses about whom the petitioners complain—in view of the fact that they were in custody, the possibilities of their communication as to details of their testimony were very limited. The little evidence of communications between them, fully explored on cross-examination, disclosed no significant comparison of testimony and no influencing of one by another. There was here much less possibility of prejudice than in *Holder v. United States*, 150 U.S. 91, where this Court sustained a conviction of murder although the witness had remained in the courtroom despite an order excluding witnesses. The court of appeals below was correct in its unanimous holding that the failure to give the admonition was not a ground for reversal of the convictions.

ARGUMENT

I

THE SENTENCE OF PETITIONER VIRGINIA MILANOVICH ON
THE LARCENY COUNT WAS PROPERLY ALLOWED TO STAND

The first contention of the petitioners relates only to Virginia Milanovich. She was found guilty on both the larceny and the receiving counts, under a charge in which the judge made clear that the only reason she could be guilty of receiving was because the evidence was uncontradicted that she had not actually taken the money. The judge said (R. 304):

Now, of course, if [petitioners] had actually removed the contents of the safe themselves, they cannot be guilty of receiving those same contents, but the evidence is clear in this case that neither [petitioner] actually had their hands on the safe or removed any money from any safe. There is no question about that. So, therefore, if they received any money—and I do not suggest to you that they did or did not receive any money—they must have received it from some other party, and then we go into the discussion of [intent]. * * *

The court of appeals, while advertent to the authorities holding that a person not the actual taker (*i.e.*, convicted of the theft only as an aider and abetter) can also be a receiver, nevertheless decided that this Court's decision in *Heflin v. United States*, 358 U.S. 415, rendered improper a conviction for both the theft and the receiving. The court therefore vacated the sentence on the receiving charge, as being inapplicable to one sentenced on the larceny charge.

Virginia Milanovich now contends that, in the absence of an instruction to the jury that it could not convict her of both larceny and receiving, she was prejudiced in that the jury was "deprived of its function to make the choice", and "might" have convicted her of receiving instead of larceny (Pet. 5; Pet. Br. 5-10).

It is the government's position that, upon the instructions given (to which, as to this aspect, the petitioner did not object), the jury indisputably found, by separate verdict, that Virginia Milanovich did the acts of aiding and abetting that made her guilty of larceny. This finding was not affected by the jury's additional finding that Virginia Milanovich also did acts that constituted receiving—even though this additional action, under the interpretation of the law made by the court of appeals, could not subject her to additional punishment beyond that applicable to the larceny.

The petitioner, and to some extent the court below, are in error in assuming that, if this Court's decision in *Heflin v. United States*, 358 U.S. 415, is accepted as applicable to the statute here involved, the jury could not properly convict of both the larceny and the receiving. As we understand the decision in *Heflin*, it does not hold that stealing and receiving are necessarily alternative acts—that, if one is committed, it is impossible to commit the other. The decision in *Heflin* holds only that Congress, in the particular statute there considered, did not intend to authorize punishment for both the theft and the receiving. Since the function of the jury is to find

the facts, and not to impose punishment, it was not error for the jury in the present case to find the facts both as to the theft and the receiving. And since the jury found that Virginia Milanovich did aid and abet the theft, she was properly punished for that crime.

A. SINCE THE JURY FOUND THAT VIRGINIA MILANOVICH COMMITTED ACTS WHICH MADE HER LIABLE TO PUNISHMENT FOR LARCENY, SHE WAS PROPERLY PUNISHED FOR THAT CRIME

The jury was extensively and correctly instructed that, in order to find guilt of larceny, it must find certain facts as to aiding and abetting, intent, and the like (see the instructions, *supra*, pp. 6-7). These instructions were given in complete independence of the court's instructions as to receiving—and properly so. It is not part of an instruction or verdict on larceny that the jury must find that a defendant did *not* also receive the money. One aiding a larceny is guilty under the statute irrespective of whether that offender did or did not also receive some of the stolen property. It was upon these clear instructions as to larceny that the jury returned a separate verdict finding petitioner Virginia Milanovich guilty of larceny, and the evidence amply supports that finding. There is no basis in the evidence, in logic, or in any legitimate conduct of a jury, for speculation that the further finding of the jury that she also received the money improperly affected the jury's conclusion as to larceny.

Even if the possible maximum penalties for receiving were greater or less than those for larceny—actually they are the same (*supra*, p. 2)—the jury

could not properly color its finding of fact with consideration of matters of punishment which are outside its jurisdiction; and such tampering with factual findings could not legitimately be ascribed to a jury or presented as a right of which a defendant has been deprived. As stated by the judge to the jury, without challenge by petitioner (R. 312):

May I say with respect to the question of any punishment which may be imposed upon either defendant in the event either defendant is found guilty, this is solely my responsibility. You are concerned only with the determination of the matters of fact and the issue that has been submitted to you for determination is whether or not these defendants or either of them are guilty of the offense or offenses which they are respectively charged with in the indictment. Your verdict will be in the nature of a report to the Court upon the truth of the charges here made, and when you have done this your responsibility as jurors will be at an end as far as this case is concerned. You, of course, are not concerned with the wisdom of the law or the method of the enforcement of the law.

And since the maximum punishment for both offenses is the same, even if the jury might have considered possible punishment, this could not have affected its verdict since it had no way of knowing what punishment the judge would impose.

Moreover, the petitioner did not, as required by Rule 30, F. R. Crim. P., object to the instructions submitting both the larceny and receiving counts to the jury, although she did contend that "as a matter

of law * * * the case should have been dismissed and a charge was not necessary" (R. 315). Since the petitioner's counsel was alert and energetic in objecting to other aspects of the instructions and since he repeatedly, during the trial, pointed out that a thief could not receive from himself (R. 15, 22, 231, 296-297), the failure to object cannot be ascribed to, or excused as, mere inadvertence. Under these circumstances it comes too late for the petitioner to contend that the jury should not have been allowed to find the facts as to both counts. And since the jury under explicit instructions clearly found that she was guilty of aiding and abetting the larceny, there is no reason why the sentence imposed upon a verdict so amply supported by the evidence should not be allowed to stand.

B. SINCE THERE IS NO FACTUAL INCONSISTENCY IN CONVICTIONS FOR BOTH AIDING AND ABETTING A LARCENY AND FOR RECEIVING, THERE WAS NO REVERSIBLE ERROR IN ALLOWING THE JURY TO FIND THE FACTS AS TO BOTH, REGARDLESS OF WHAT SENTENCE COULD ULTIMATELY BE IMPOSED

The petitioner's argument, and the views of the dissenting judge below, confuse the rationale of the common law rule as to the relationship between theft and receiving and the rationale of this Court's decision in *Heflin v. United States*, 358 U.S. 415. The common law rule, that a principal of the first degree in larceny could not also be the receiver, was based on the factual difficulty in finding that a person received something from himself. The rule was not extended further than its reason. Hence, at common law and in decisions that follow that rule, it was held that one

who participated in the larceny only as an aider and abettor, but did not do the actual taking, could be convicted of receiving. As stated in 2 Wharton, *Criminal Law and Procedure* (1957 ed.) 298, "a person who is physically present when the goods are stolen but who does not aid in their caption and asportation, may commit the offense of receiving the stolen goods [citing authorities]; on the theory that the act of receiving the goods is under such circumstances subsequent to the theft and not a part of it [citing authorities]." See *Aaronson v. United States*, 175 F. 2d 41 (C.A. 4). See also *Weisberg v. United States*, 258 Fed. 284 (C.A.D.C.); *Bloch v. United States*, 261 Fed. 321, 325 (C.A. 5), certiorari denied, 253 U.S. 484; *Inman v. United States*, 243 F. 2d 256 (C.A.D.C.), certiorari denied, 358 U.S. 888; *State v. Rutledge*, 232 S.C. 223, 228-229; and the authorities collected in 136 A.L.R. 1100, *et. seq.*, to the effect that there can be guilt of receiving where the participant in the larceny was not present and assisting in the actual theft, notwithstanding statutes making accessories guilty as principals.

This Court's decision in *Heflin v. United States*, 358 U.S. 415, does not turn on any inherent conceptual difficulty in finding that the same person can logically commit both crimes; its holding rests on an interpretation of legislative intent. The Court held in *Heflin* that Congress (specifically with reference to bank robbery) did not intend to impose separate punishment for the receipt and concealment of money by the thief, irrespective of whether logically this could or could not occur. We may accept, for the purposes of this case, the ruling of the court below that the *Heflin*

rationale applies to the statute here involved and that a defendant may not be subjected to separate punishments for the theft and for receiving. It does not follow from this ruling that the finding of a jury that a person was guilty of both the stealing and the receipt of the money was reversible error. So long as the counts are not factually inconsistent—and even at common law it was recognized that they are not—the finding of guilt as to one offense in no sense precludes the finding of guilt of another.

Where the common law rationale of inconsistent offenses applies—i.e., where it is logically impossible to commit both offenses, so that conviction for one must necessarily exclude the other—there is basis for saying that a jury must decide which of the two alternative offenses was actually committed. If it is impossible to be both actual taker of the money and receiver, then it is the function of a jury to determine whether a particular defendant is one or the other—taker or receiver. But where one act is not alternative, but merely in addition, to the other, a jury finding that both exist has done nothing inconsistent but has merely determined that both acts have been committed. Whether the punishment imposed for the two acts is proper or improper is not a matter for the jury to decide, but for the court alone.

The distinction which we have suggested was recognized by the Massachusetts courts with respect to the case on which petitioner primarily relies, i.e., *Commonwealth v. Haskins*, 128 Mass. 60. Haskins and another were charged with larceny of a cow and with receiving the same cow, knowing it to have been stolen.

The jury was specially instructed that there was no evidence to support the charge of receiving, but the jury returned a verdict of guilt upon both counts. The district attorney was granted leave to enter a *nolle prosequi* as to the second charge over the defendants' objections. The judgment was reversed upon appeal on the ground that the finding of both offenses was inconsistent in law and conclusive of a mistrial (128 Mass. 61). When, however, the Massachusetts court in *Commonwealth v. Lowrey*, 158 Mass. 18, was confronted with a verdict of guilty for both burglary and larceny, it sustained the action of the trial judge in directing acquittal on the larceny count. The court, in an opinion by Holmes, J., adverted to the requirement in *Haskins*, *supra*, that the jury must decide between inconsistent counts, but considered the particular counts before it not to be inconsistent. In short, whatever may be the merit in a holding that a jury must make the ultimate choice between factually inconsistent counts, there is no requirement that the jury make a choice where a verdict on one of two counts finds an *additional* fact supporting guilt even though the additional fact may not justify an addi-

* Even where there have been convictions for both actual theft and for receiving, courts have considered it sufficient merely to set aside the sentence for receiving. *People v. Dagbata*, 301 N.Y. 223, 228. See also comments of the Florida court, *Goodwin v. State*, 157 Fla. 751, 752, on *Bargesser v. State*, 95 Fla. 404, which was one of the cases mentioned in the dissenting opinion below; and opinion of the Illinois Court in *People v. Carr*, 255 Ill. 203, distinguishing *Tobin v. People*, 104 Ill. 565, cited in the dissent below. Consistency in verdicts has never been deemed a requirement in the federal courts. *Dunn v. United States*, 284 U.S. 390.

tional sentence. All that is required is that there be only one sentence.

The principle for which we contend is well illustrated by the decisions relating to the aggravated offense of bank robbery. Under the bank robbery statute, it has been held that the provision for increased punishment when life is put in danger does not define a separate offense, but defines merely an aggravated form of the offense of bank robbery. *Holiday v. Johnston*, 313 U.S. 342, 349. Where the aggravated form of the offense is charged, a jury must find two elements—that the defendant committed the robbery and that in the course thereof he put life in jeopardy. The offense remains single whether these elements are charged in one count or two. There is value in charging the two elements of the one crime in separate counts since this serves to direct the jury's attention to the necessity of considering each element separately, and gives specificity to the verdict. But, whether the offense is charged in one count or two, the fact remains that two elements must be found although only one punishment may be imposed. Since the jury has to find both elements, there clearly would be no basis for ordering a new trial where the jury found both elements in the form of a verdict on two separate counts, even though (as sometimes has happened) a court erroneously imposed sentences on each of the counts. Rather, since the error lies, not in the jury's finding both facts, but in the court's imposing two sentences, the courts have corrected the error by eliminating the lesser of the sentences. This has occurred whether the question arose on direct appeal

or collateral attack. *E.g., O'Keith v. United States*, 158 F. 2d 591 (C.A. 5); *Remine v. United States*, 161 F. 2d 1020 (C.A. 6), certiorari denied, 331 U.S. 862; *United States v. Di Canio*, 245 F. 2d 713 (C.A. 2), certiorari denied, 355 U.S. 874; *Lowe v. United States*, 257 F. 2d 409 (C.A. 6).

Essentially the same situation is presented here with respect to the function of the court and jury. It is true that a jury does not, as in the aggravated bank robbery cases, have to find two elements. (that the defendant both participated in the theft and received the money). In *the* where, as in this case, the jury has actually done so, the function of the appellate court is the same as in the bank robbery situation. Only one punishment can be imposed whether there is one offense (abetting the taking) or two (abetting the taking, and receiving). But the fact that only one punishment can be imposed does not mean that it was error for the jury to find, and to be permitted to find, guilt of both offenses. As we have pointed out, there is no logical difficulty in finding that one person aided and abetted a larceny and also received the money. The two crimes are not alternatives, even though only one punishment may be imposed. In the factual situation here presented the receiving is in addition to, and not in exclusion of, liability for the taking. Hence, the jury could properly find that the petitioner committed both aspects of the crime and the petitioner has achieved all that was her due when she has been held liable to only one punishment.

That an additional verdict on a second count does not totally invalidate the sentence is likewise illus-

trated by this Court's decisions in *Prince v. United States*, 352 U.S. 322, 329 (holding that Congress did not intend separate punishment for entering a bank with intent to commit a felony and for the completed robbery) and *Heflin v. United States*, 358 U.S. 415 (holding that one sentenced for bank robbery could not be additionally punished for receiving). It is true that both cases arose on collateral attack, but in neither did the Court deem that the judgment was totally invalidated because the jury found both aspects of the crime. It was deemed sufficient simply to have the sentence corrected to eliminate the additional punishment.

Lower courts, after the *Prince* decision, were confronted with the situation where a defendant had been given a longer sentence on a count charging entry into a bank with intent to commit a felony (subject to a maximum of 20 years) than on another count charging a completed larceny (subject to a maximum of 10 years). The defendants in such cases sought to have the sentence for entry set aside on the theory that the entry merged into the completed larceny. The courts refused to accede to these claims, holding that since the two counts related to one offense the longer of the two sentences could stand. *Purdom v. United States*, 249 F. 2d 822, 826 (C.A. 10), certiorari denied, 355 U.S. 913; *United States v. Williamson*, 255 F. 2d 512 (C.A. 5), certiorari denied, 358 U.S. 941; *United States v. Leather*, 271 F. 2d 80 (C.A. 7), certiorari denied, 363 U.S. 831; *Audett v. United States*, 265 F. 2d 837 (C.A. 9), certiorari denied, 361 U.S. 815. In the *Audett*

case, where concurrent sentences of 20 years and 10 years had been imposed respectively on counts for the entering of the bank and for the robbery, the court of appeals said, "The trial judge, by imposing the maximum sentence on Count I and allowing the sentence on Count II to run concurrently, indicated that he intended the maximum sentence to be twenty years."

* * * In these circumstances the policy to be followed is to vacate the lower sentence on the second count."

In this case, where the jury explicitly found that petitioner Virginia Milanovich both aided and abetted the larceny and received the stolen money, the judge by his sentence indicated that he thought a 10-year sentence was justified. The judge explicitly explained why he imposed a ten-year sentence for the larceny on the wife as against five years for the husband on the same count. His reason was that, in contrast to the husband's record, the wife's revealed a life of crime (see *supra*, pp. 7-8).

II

NO ABUSE OF DISCRETION WAS INVOLVED IN THE TRIAL JUDGE'S REFUSAL TO INSTRUCT WITNESSES NOT TO DISCUSS THE CASE

The petitioners complain of the fact that, although the trial judge excluded the witnesses from the courtroom, he declined to instruct the witnesses not to discuss the case. The court of appeals below, without dissent, sustained the judgment as against this objection, relying upon the established authority that even the exclusion of witnesses from the courtroom

is a matter resting in the discretion of the trial judge.⁵ As stated by Judge Learned Hand, "A *fortiori* an instruction to them not to discuss the evidence while out of the courtroom is also discretionary." *United States v. Chiarella*, 184 F. 2d 903, 907 (C.A. 2), on rehearing vacated on other grounds, 187 F. 2d 12, remanded for resentencing, 341 U.S. 946. And see *United States v. White*, 28 Fed. Cas. 550, 551 (No. 16,675), 5 Cr., C.C., 38.

The court of appeals below observed that ordinarily it would seem proper for a trial judge to caution witnesses against comparing testimony, but that in the instant case no abuse of discretion by the trial judge appeared. The trial judge, while willing to exclude the witnesses from the courtroom, clearly feared that admonitions to the witnesses concerning their conversations outside the courtroom would merely draw down upon him a host of delaying collateral inquiries of hopelessly inconclusive nature. In all, there were 50 to 70 witnesses⁶ who were to testify, many of them only as to minor portions of the case. As to the

⁵ With respect to the discretionary nature of the decision to exclude witnesses from the courtroom, see *Holder v. United States*, 150 U.S. 91, 92; *Mitchell v. United States*, 126 F. 2d 550, 553 (C.A. 10), certiorari denied, 316 U.S. 702; *United States v. Postma*, 242 F. 2d 488, 493-494 (C.A. 2), certiorari denied, 354 U.S. 922; *Johnston v. United States*, 260 F. 2d 345, 347 (C.A. 10), certiorari denied, 360 U.S. 935; *Gates v. United States*, 122 F. 2d 571, 577 (C.A. 10), certiorari denied, 314 U.S. 698; *United States v. Cases, etc.*, 179 F. 2d 519, 522 (C.A. 2), certiorari denied, 339 U.S. 963.

⁶ In addition to the counts presently involved, there were two other counts relating to a distinct theft.

three accomplices—the only witnesses about whom petitioners complain—in view of the fact that they were in jail, the possibilities of their communication as to details of their testimony were very limited. Guerrieri testified on cross-examination that, after his testimony the day before, he and Grimmer left together and were brought to court together (R. 108), but since they were under guard there was little possibility for matching of testimony. Sofocleous, who was Guerrieri's brother-in-law, talked with Guerrieri, but testified that his talk was not about the case (R. 137).⁷ Grimmer confirmed that he and Guerrieri had sent notes in jail and that they had talked on the way to the trial (R. 226). He said that after the case had started they had talked "somewhat" about the case (R. 226). Grimmer had also talked to his wife after she testified (R. 215-216), but since she testified to threats to her after Grimmer was in jail (R. 65), whereas he testified to the theft, there could be no dovetailing of testimony.

The trial judge believed that the matter of communication between witnesses could better be handled by cross-examination than by giving an admonition that might not be properly understood and might give rise to collateral motions. His exercise of discretion in that respect resulted in no prejudice to petitioners. The court below, therefore, properly found that the failure to give the admonition did not require

⁷ Sofocleous testified that he discussed the case before he (Sofocleous) was sentenced (R. 142). This was before the present trial and has no bearing on the effect of any admonition by the judge or lack of it.

reversal of the convictions. There was here much less possibility of prejudice than in *Holder v. United States, supra*, 150 U.S. 91, where this Court sustained a conviction of murder although the witness had remained in the courtroom despite an order excluding witnesses.

CONCLUSION

For the reasons stated, we respectfully submit that the judgment below should be affirmed.

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Solicitor General.

MALCOLM RICHARD WILKEY,

Assistant Attorney General.

BEATRICE ROSENBERG,

J. F. BISHOP,

Attorneys.

DECEMBER 1960.

SUPREME COURT OF THE UNITED STATES

No. 79.—OCTOBER TERM, 1960.

Mike Milanovich et al., Petitioners.	} On Writ of Certiorari	
v.		to the United States
United States of America.		Court of Appeals for the Fourth Circuit.

[March 20, 1961.]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioners are husband and wife. They were both convicted in a Federal District Court for stealing several thousand dollars in currency from a commissary store at a United States Naval Base. The wife was convicted also on a separate count for receiving and concealing the stolen currency. Both petitioners were sentenced to prison on the larceny conviction, the husband for a term of five years, and the wife for a ten-year term. In addition, the wife received a five-year concurrent sentence on the receiving count.

¹ The statute under which the petitioners were convicted is 18 U. S. C. § 641. It provides;

"Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

"Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

Throughout the trial counsel for the petitioners consistently maintained the position that a thief could not be convicted of receiving from himself.² Although directing an acquittal on the receiving count in the husband's case, the trial judge overruled a similar motion on behalf of the wife. Counsel then clearly indicated his intention to request that the jury be instructed that it could not find the wife guilty of both stealing and receiving.³ The trial judge responded by pointing out that the Fourth Circuit had decided, in *Aaronson v. United States*, 175 F. 2d 41, that "it is possible that as long as the person did not actually participate in the actual taking of the goods, that same person may be found guilty of receiving and concealing and may also be found guilty as an accessory before the fact or as an aider and an abetter of the actual charge of theft." Faced with this controlling Fourth Circuit authority, counsel did not engage in the futile exercise of submitting a more formal request for such instructions.

When the case reached the Court of Appeals, that court put aside its decision in the *Aaronson* case, in the light of this Court's decision in *Heflin v. United States*, 358 U. S. 415, which had been announced in the meantime. In *Heflin* we held that a defendant could not be convicted and cumulatively sentenced under 18 U. S. C. § 2113 for both robbing a bank and receiving the proceeds of the robbery. Relying on that decision, the

² "[W]e feel, sir—for the jury to be considering both receiving and stealing—that both charges are inconsistent and if the evidence is to be believed that these people are participants, then they cannot be guilty of receiving, and if they are guilty of receiving, they cannot be guilty of participating."

³ "Your Honor, we will ask the Court to instruct the jury that inasmuch as they are inconsistent counts that they can only come back, if they come back with a verdict of guilty, as to one of the other, but not both."

court set aside the sentence imposed upon the wife for receiving. 275 F. 2d 716. It was the court's view that "in the absence of a contrary indication by Congress, a defendant charged with offenses under statutes of this character may not be convicted and punished for stealing and also for receiving the same goods." 275 F. 2d, at 719. Although *Heflin* involved a different section of the criminal code, the court found "no differences between the two statutes or their legislative histories justifying divergent interpretations in respect to the issue before us."

In this view we think that the Court of Appeals was correct. As the court recognized, the question is one of statutory construction, not of common law distinctions. Compare, *Metcalf v. State*, 98 Fla. 457, 124 So. 427; *Smith v. State*, 59 Ohio St. 350, 52 N. E. 826; *Jenkins v. State*, 62 Wis. 49, 21 N. W. 232; *Regina v. Hilton*, Bell C. C. 20, 169 Eng. Reprint 1150, with *Allen v. State*, 76 Tex. Crim. Rep. 416, 175 S. W. 700; *Regina v. Perkins*, 2 Den. C. C. 458, 169 Eng. Reprint 582; *Regina v. Coggin*, 12 Cox C. C. 517. With respect to the receiving statute before us in *Heflin*, we decided that "Congress was trying to reach a new group of wrongdoers, not to multiply the offense of the . . . robbers themselves," 358 U. S., at 420. We find nothing in the language or history of the present statute which leads to a different conclusion here. As in *Heflin*, the provision of the statute which makes receiving an offense came into the law later than the provision relating to robbery.⁴

It is now contended that setting aside the sentence on the receiving count was not enough—that the conviction on the larceny count must also be reversed, and the case

⁴ The paragraph making it an offense to steal government property had its genesis in the Act of March 2, 1863, c. 67, 12 Stat. 696, 698. The paragraph as to receivers originated in the Act of March 3, 1875, c. 144, § 2, 18 Stat. 479.

remanded for a new trial. The argument is that although the evidence was sufficient to support a conviction for either larceny or receiving,⁵ the judge should have instructed the jury that a guilty verdict could be returned upon either count but not both. It is urged that since it is now impossible to say what verdict would have been returned by a jury so instructed, and thus impossible to know what sentence would have been imposed, a new trial is in order. This was the view of Chief Judge Sobeloff, dissenting in the Court of Appeals. 275 F. 2d, at 721.

We think that the point is well taken. In *Heflin* we were not concerned with the correctness of jury instructions, since that case arose out of a collateral proceeding to correct an illegal sentence where the petitioner was asking only that the cumulative punishment imposed for receiving be set aside. In this case, by contrast, a direct review of the conviction brings here the entire record of the trial. We hold, based on what has been said as to the scope of the applicable statute, that the trial judge erred in not charging that the jury could convict of either larceny or receiving, but not of both.

Though setting aside the shorter concurrent sentence imposed upon the wife for receiving, the Court of Appeals left standing a ten-year prison term for larceny, double the punishment that had been imposed upon the husband for the identical offense. Yet there is no way of knowing whether a properly instructed jury would have found the wife guilty of larceny or of receiving (or, conceivably, of neither). Thus we cannot say that the mere setting aside

⁵ It is acknowledged here that the evidence was sufficient to support a jury finding that both petitioners aided and abetted the larceny, and thus were guilty as principals under 18 U. S. C. § 2. It is also conceded that the evidence was sufficient to support the wife's conviction for receiving and concealing the stolen property (a substantial amount of silver currency having been found in a suitcase in her home two weeks after the robbery).

of the shorter concurrent sentence sufficed to cure any prejudice resulting from the trial judge's failure to instruct the jury properly. It may well be, as the Court of Appeals assumed, that the jury, if given the choice, would have rendered a verdict of guilt on the larceny count, and that the trial judge would have imposed the maximum ten-year sentence on that count alone. But for a reviewing court to make those assumptions is to usurp the functions of both the jury and the sentencing judge.

We find no merit in the petitioners' argument as to the trial court's conduct with respect to cautionary instructions to the witnesses for the Government. Accordingly, the judgment as to Mike Milanovich is affirmed. For the reasons stated, the judgment as to Virginia Milanovich is set aside, and her case remanded to the District Court for proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 79.—OCTOBER TERM, 1960.

Mike Milanovich et al., Petitioners.	} On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.
v.	
United States of America.	

[March 20, 1961.]

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE CLARK, MR. JUSTICE HARLAN and MR. JUSTICE WHITTAKER join, dissenting.

This is a prosecution brought under 18 U. S. C. § 641 upon an indictment containing several counts. One charged the defendant, petitioner herein, with the theft of government property; another charged her with receiving the stolen property with an intent to convert it to her own use. Both counts were allowed to go to the jury which explicitly found the defendant guilty on each of the two counts.

This was the evidence on which the jury must have based their verdict against the defendant. She and her husband, as owners of an automobile, transported three

¹ "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof, or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted.—

"Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

others under an arrangement whereby the three were to break into a United States naval commissary building with a view to stealing government funds. Defendant and her husband were to remain outside for the return of their accomplices after the accomplishment of the theft. In fact, for one reason or another, husband and wife drove off without awaiting the return of their friends. Not finding the automobile where they had left it, the thieves buried the booty. No share of the stolen money ever touched the hand of petitioner or was in any sense received by her until seventeen days later when, after she had removed some of the booty from the base, it was soon after discovered by FBI agents during a legal search of the premises. Since she herself was not an active participant in the breaking in and thieving, she was amenable to § 641 because she, as an accessory, was legally deemed a principal under 18 U. S. C. § 2.² On this basis the trial judge committed the case to the jury and the jury was enabled to find her guilty of the substantive offense of stealing government property, as well as to return a verdict of guilty on the receiving charge. The trial judge then sentenced the defendant on each of the counts. Because of the extensive criminal record of the defendant, he imposed a sentence of ten years on the thieving count and five years on the receiving count, the sentences to run concurrently.

The Court of Appeals, drawing on our decision in *Heflin v. United States*, 358 U. S. 415, deemed it necessary to set aside the sentence imposed on the receiving count. It read *Heflin* as holding that the crime of re-

² "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

"(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

ceiving was solely directed to those who were not convicted of stealing; the latter conviction was therefore invalidated. The Court, likewise relying on *Heflin*, today holds that since the jury should have been instructed that they had power to return a verdict of guilty on only one count, the proceedings against the defendant must start all over again, since a reviewing court cannot predict what the jury would have done under proper instructions.

Both of these conclusions rest, I believe, on a wholly unwarranted reliance on *Heflin*. They disregard the only issue that was before the Court in that case, and thereby misconceive its holding. Today's decision reflects the common-law doctrine of merger and the consequences of such merger on the requirements of criminal procedure—specifically, what separate counts may be laid in an indictment, and the duty of a trial judge in charging the jury the kind of a verdict they may return to an indictment of multiple counts.

It is hornbook law that a thief cannot be charged with committing two offenses—that is, stealing and receiving the goods he has stolen. *E. g.*, *Cartwright v. United States*, 146 F. 2d 133; *State v. Tindall*, 213 S. C. 484, 50 S. E. 2d 188; see 2 Wharton, Criminal Law and Procedure, § 576; 136 A. L. R. 1087. And this is so for the commonsensical if not obvious reason that a man who takes property does not at the same time give himself the property he has taken. In short, taking and receiving as a contemporaneous—indeed a coincidental—phenomenon, constitute one transaction in life and, therefore, not two transactions in law. It also may well be that a person who does not himself take but is a contemporaneous participant as an aider and abettor in the taking is also a participant in a single transaction and therefore has committed but a single offense. *Regina v. Coggins*, 12 Cox C. C. 517; *Regina v. Perkins*, 2 Den. C. C. 458, 169 Eng.

Rep. 582; *Rex v. Owen*, 1 Moody C. C. 96, 168 Eng. Rep. 1200. In such a case, the jury must be told that the taking and receiving, being but a single transaction constitute, of course, only one crime. See *Commonwealth v. Haskins*, 128 Mass. 60. (This, of course, does not bar Congress from outlawing and punishing as separate offenses the severable ingredients of one compound transaction. See *Gore v. United States*, 357 U. S. 386.)

The case before us presents a totally different situation—not a coincidental or even a contemporaneous transaction, in the loosest conception of contemporaneity. Here we have two clearly severed transactions. The case against the defendant—and the only case—presented two behaviors or transactions by defendant clearly and decisively separated in time and in will. The intervening seventeen days between defendant's accessorial share in the theft and her conduct as a recipient left the amplest opportunities for events outside her control to frustrate her hope of sharing in the booty, or ample time for her to change her criminal purpose and avail herself of a *locus poenitentiae*. Two larcenies, separated in time, would not be merged; what legal difference between the two situations here?

It surely is fair to say that in the common understanding of men such disjointed and discontinuous behaviors by Mrs. Milanovich—(1) bringing thieves to the scene of their projected crime and departing without further ado before the theft had been perpetrated, and (2) taking possession seventeen days later of part of the booty—cannot be regarded as a single, merged transaction in any intelligible use of English. And that which makes no sense to the common understanding surely is not required by any fictive notions of law or even by the most sentimental attitude toward criminals. I venture to believe that not a single case concerned with a situation comparable to that now before the Court can be found in the

law reports of England, of any of the States of this country, or of the federal courts, in which it was held or suggested that two disjointed, decisively separated manifestations of conduct constitute as a matter of law a single, fused transaction. An ample canvass of the reports has certainly not revealed the existence of such a case, and one reads the opinion of the Court in vain to find a suggestion that any such precedent is available.

One can say with confidence that *Heflin* is no warrant for the conclusion pronounced by the Court. There was not the remotest suggestion in the petition that brought that case here, in the briefs that were submitted before argument, in the oral argument, or in the opinion which formulated the decision, that the case was concerned with the power of the court to submit the several counts to the jury and the right of the jury to convict on separate counts for conduct charging separate transactions clearly separated in fact. In *Heflin*, the jury convicted defendant on separate counts of bank robbery and receiving stolen money. We held that we could find "no purpose of Congress to pyramid penalties for lesser offenses following the robbery," and therefore ruled against the cumulation of punishments, but found no impropriety in submitting both counts to the jury. I find not a word, not a hint, not a subtle innuendo suggesting that the case dealt with criminal procedure—that is, with submission of different counts to a jury, with the appropriateness of the judge's charge to the jury, or with the right of a jury to bring in separate verdicts on separate counts on the basis of evidence justifying such submission and such verdicts.

Heflin is one of a recent series of cases having to do with what the Court in *Prince v. United States*, 352 U. S. 322, 325, called "fragmentation of crimes for purposes of punishment." Beginning with *Bell v. United States*, 349 U. S. 81, these cases concerned the propriety of cumula-

tive sentences within different statutory frameworks.³

"It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment . . .

[when] Congress does not fix the punishment for a federal offense clearly and without ambiguity. . . ." *Bell v.*

United States, *supra*, at 83-84. In not one of these cases will there be found a word having to do with how crimes should be charged, how submitted to the jury, or what verdicts the jury may return. *Heflin*, like the rest of these cases, was concerned with the duty of the trial judge in sentencing after the jury was through with its job. Indeed, in all these cases, there were several counts on which the jury found a verdict and the issue arose not as to the propriety of leaving all the counts to the jury, but what sentence should be imposed after the verdict had been returned.

To draw from *Heflin* the doctrine that an aider and abettor to a theft who at an appreciably later time receives some of the stolen goods may not be charged on

³ In *Bell*, the defendant plead guilty to an indictment under the Mann Act which charged him in two counts with transporting two women, respectively, for immoral purposes on one trip. This Court held that Congress did not intend to make "simultaneous transportation of more than one woman in violation of the Mann Act liable to cumulative punishment for each woman so transported." 349 U. S., at 82-83.

In *Prince*, two counts of an indictment charging, respectively, entering a bank with intent to rob and robbery were submitted to the jury, which returned verdicts of guilty on both. The Court held that the sentences could not be cumulated and remanded the case to the District Court for resentencing, but made no reference to the fact that two counts were laid and found by the jury.

In *Callanan v. United States*, 364 U. S. 587, defendant was convicted on separate counts for conspiracy and extortion. In view of the historic distinctiveness of a conspiracy from the substantive offense which is its object, we held that Congress had made allowable consecutive sentences under the applicable statute.

separate counts for both transactions, or that a judge may not leave both counts for a jury verdict of guilt on either one or both, when no such question was in issue or adverted to in *Heflin*, is to disregard the whole philosophy of our law based on precedents. It is to base reliance on a case for a new doctrine when that case affords no sustenance for it.

I agree with the District Court in the imposition of two sentences to run concurrently.⁴

⁴ I agree with this Court that the husband's claim of trial error is without merit.

SUPREME COURT OF THE UNITED STATES

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[March 20, 1961.]

MR. JUSTICE CLARK, whom MR. JUSTICE WHITTAKER joins, dissenting.

My duty here is to help fashion rules which will assure that every person charged with an offense receives a fair and impartial trial. But that obligation does not require my ferreling out of the record technical grounds for reversing a particular conviction, grounds which could not possibly have affected the jury's verdict of guilt as a factual determination. If the Government perseveres, the Court's order contemplates a new trial for one of five safecrackers who beyond any evidentiary doubt is guilty of aiding and abetting in looting a government safe of about \$14,000, and of thereafter receiving part of the proceeds. The case was tried before a jury for 10 days with scrupulous adherence to proper procedure. Judge Hoffman gave a clear and, I think, correct charge to which petitioner made no objection on the ground upon which the Court now bases its reversal. Nor did petitioner offer a proposed instruction covering that issue. Furthermore, the motion for new trial, as set forth in the record, urged no such ground as error. Nonetheless, the Court reverses saying that "counsel for petitioners consistently maintained the position" throughout the trial "that a thief could not be convicted of receiving from himself." Judge Hoffman did not try the case, nor was it submitted to the jury, on that theory. The record shows, as my Brother FRANKFURTER points

out, that beyond question Mrs. Milanovich took no part in the actual physical looting of the safe, and first received any of the stolen money more than two weeks later, not from herself, but from where the safecrackers had buried it. It was on that theory, to which petitioners made no objection, that Judge Hoffman submitted the case to the jury.

With all deference I must point out that in support of its view the Court has quoted merely an excerpt from a statement of petitioner's counsel *ante*, p. —, n. 2, made in chambers on his motion to require the United States Attorney to elect as between the two counts of aiding and abetting, and receiving. Admittedly, this motion was not well taken. However, during that presentation counsel stated: "we will ask the Court to instruct the jury" that it cannot find petitioners guilty on both counts. But, after the motion to elect was denied, no such instruction was offered nor was there made on that ground any objection to the charge omitting such instruction. Now petitioners have chosen to abandon a claim of error in the denial of their motion to elect, and rely instead upon error in the charge, although no objection had been made on that ground.

Moreover, the charge as given could not possibly have prejudiced Mrs. Milanovich on sentence. She was found guilty both of aiding and abetting, and of thereafter receiving part of the stolen loot. She now stands, after the action of the Court of Appeals, sentenced only on the aiding and abetting count. Each count carried the same possible penalty, and, even if the case had been submitted to the jury as is now required, it seems rather unreal for us to consider as anything more than so remotely possible as to be highly improbable, that in sentencing petitioner on the single count the trial judge, who would nonetheless have heard all the evidence on both counts, would be more

likely to impose a lesser sentence than the 10 years already given.

The Court does not mention the dilemma which its ruling produces. It says the jury should have been instructed that a guilty verdict could be returned on either count, but not both. This would require the jury to return a not guilty verdict on one count. Here, where the jury had in fact found Mrs. Milanovich guilty of both offenses, it could yet be required to return a false verdict, *i. e.*, false in fact even if true in law, on one of them. Except for its imperfect analogy to the case of factually inconsistent counts charging lesser-included offenses of the main count (as in first degree murder), in which the trial judge gives the jury instructions to be applied successively, the rule suggested today is unheard of in our jurisprudence. For here the jury is invited to consider counts not factually inconsistent, and in such sequence as it chooses, with no more reason to convict on one rather than another except its election on how to characterize the grounds supporting petitioner's imprisonment. Since such a result is required by the present disposition, it would have been better to rule that the prosecutor must elect between the counts, as petitioner originally wished.

As I see the case, however, the jury could not on the evidence here have found the petitioner not guilty, as a matter of fact, on the aiding and abetting count, and guilty on the receiving one. To be guilty of receiving she must have had knowledge of the stolen character of the money taken from the safe. In this case the only means through which the fact of this requisite knowledge was demonstrated was the clear and convincing proof given by her partners in the crime whose testimony beyond any peradventure proved her guilty of both offenses. How, I ask, could she have been harmed by the jury finding her guilty of both offenses rather than choosing between the two?

To me it is clear that where the evidence is sufficient the jury should be left free, as it always has been, to find the fact of guilt. If in law the verdicts so found, although proper determinations of fact, are not all enforceable, the dilemma is adequately resolved by requiring the trial judge to forego sentencing on the unenforceable verdicts.

For these reasons, and those of my Brother FRANK FURTER, whom I join, I dissent.